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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Eighth session

Summary record of the public part* of the 119th meeting
Held at the Palais Wilson, Geneva, on Monday, 2 February 2015, at 10 a.m.

Chairperson: Mr. Decaux

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* The summary record of the closed part of the meeting appears as document CED/C/SR.119/Add.1.

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The meeting was called to order at 10 a.m.

Opening of the session

1. **The Chairperson** declared open the eighth session of the Committee on Enforced Disappearances.

Statement by the representative of the United Nations High Commissioner for Human Rights

2. **Mr. Walker** (Chief, Civil, Political, Economic, Social and Cultural Rights Section, Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that, although the pace of ratification was slow, the number of States parties to the International Convention for the Protection of All Persons from Enforced Disappearance had risen to 44 with the ratification of the Convention by Slovakia, which had also accepted the competence of the Committee to receive and consider communications.

3. OHCHR had seen a significant cut in extrabudgetary resources for all parts of the organization. In that context, in 2015 the Office would focus on assisting each committee to reach the targets set out in General Assembly resolution 68/268, on strengthening and enhancing the effective functioning of the human rights treaty body system, for documentation related to State party reporting. In order to be able to respond to the General Assembly's request for a biennial report on the implementation of the resolution, which also involved the harmonization of working methods, OHCHR had begun to collect data and track progress in that regard. That effort would include a review of the application of the Addis Ababa guidelines on the independence and impartiality of members of the human rights treaty bodies. The Committee might therefore wish to consider establishing an internal mechanism to track its progress in applying those guidelines.

4. Recalling that the Committee had requested the inclusion, on an exceptional basis, of a fourth official language for the current session, in addition to the three official languages provided for in the resolution, he urged the Committee to be selective in its requests to ensure that the limited resources available would be sufficient to meet the needs of all the treaty bodies.

Statement by the Chairperson

5. **The Chairperson**, pointing out that the eighth session marked the end of the Committee's first four-year cycle, said that many States parties had failed to report within two years of ratification, as provided for under article 29. Reporting was a crucial basis for the effective implementation of the Convention and for a constructive dialogue with the Committee; therefore, the Committee should use all means at its disposal to ensure compliance.

6. The Committee would be working at full capacity during the session, as it would be considering the reports of three States parties and preparing lists of issues for another two. Thanks to the joint efforts of the International Commission of Jurists and the Centre for Civil and Political Rights, the long-awaited dialogue with the delegation of Mexico, which would be the first State party to have its report considered at the current session, would be webcast live. The public discussion of the report of Mexico would, given the dramatic situation on the ground, be a key step towards the full implementation of the Convention.

7. Since the previous session, he had had fruitful discussions with the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions in order to align the conceptual approaches that they and the Committee were taking to the fulfilment of their various mandates. In addition to their

annual meetings, the chairpersons of human rights treaty bodies also held informal gatherings, the latest of which had resulted in the adoption of a document on the Sustainable Development Goals and another substantive document entitled *Human Rights against Violence*. It was of the utmost importance for all the chairpersons to be united on vital issues. The next meeting of chairpersons, over which the Committee on Enforced Disappearances would be presiding, would take place in June 2015 in Costa Rica and would focus on developing guidelines on reprisals.

Adoption of the agenda

8. *The agenda (CED/C/8/1) was adopted.*

Minute of silence in remembrance of victims of enforced disappearances

9. *At the invitation of the Chairperson, all those in attendance observed a minute of silence in remembrance of victims of enforced disappearance.*

The public part of the meeting was suspended at 10.20 a.m. and resumed at 11.30 a.m.

Consideration of reports of States parties to the Convention

Initial report of Mexico (CED/C/MEX/1 and CED/C/MEX/Q/1)

10. *At the invitation of the Chairperson, the delegation of Mexico took places at the Committee table.*

11. **Mr. Gómez Robledo** (Mexico), introducing the initial report of Mexico (CED/C/MEX/1), said that his Government recognized that, despite the significant progress made in promoting human rights in his country, challenges remained to be overcome, especially in view of the recent events in Iguala, which had sparked indignation and condemnation around the world. Both the Government and society of Mexico were committed to seeking the truth about those events and bringing the guilty parties to justice. Those events also highlighted the importance of continuing to address the problems of poverty, exclusion and corruption as a means of combating the violence and organized crime that went along with them, while also strengthening the State's capacity to provide security and justice.

12. The Attorney General of the Republic had launched a criminal investigation into the Iguala events on a scale that was unprecedented in the country's recent history. He had also requested technical assistance from the Inter-American Commission on Human Rights in that connection. In mid-January 2015, the Commission had appointed a group of independent experts who would begin their work in the coming days. Those experts would not only assess the State's response in the case but would also have the power to make farther-reaching recommendations. Mexico was open to constructive criticism and welcomed assistance from other international institutions and Governments but also wished to point out that, in order to achieve their desired end, the efforts of international human rights organizations should place priority on a dialogue focusing on a shared agenda rather than on denunciation.

13. A comprehensive system for preventing the reoccurrence of events such as those of Iguala was urgently needed. In November 2014, the President had announced 10 measures to strengthen security, justice and the rule of law in Mexico, including the preparation of legislation that would allow Congress to adopt general laws on the prevention of torture and enforced disappearance, the establishment of a national missing persons search system and the adoption of procedures for ensuring that investigations into enforced disappearances were timely, exhaustive and impartial.

14. Mexico had made a great deal of progress on human rights issues over the past three decades, and his delegation trusted that the Committee would at all times work in a spirit of dialogue and cooperation with States that had voluntarily assumed the obligations set forth in the Convention.

15. **Ms. García Laguna** (Mexico) said that the Government was introducing various mechanisms for use in searching for disappeared persons and was working to improve coordination between federal and state institutions in that connection. In September 2013, the Attorney General's Office had signed an agreement with the International Committee of the Red Cross to obtain licences for its ante-mortem/post-mortem database software, and efforts were under way to train staff in its use. The database was already in operation and would be in use in attorneys general's offices, public prosecutors' offices and forensic services throughout the country by the end of 2015. The Missing Persons Search Unit, established in June 2013, had a staff of 170 and was authorized to receive complaints of involuntary or enforced disappearance. Of the 627 persons whom the Unit had searched for thus far, 103 had been located. The Attorney General's Office had also signed an agreement with families of migrants who had disappeared and with various Mexican organizations for the establishment of a forensic commission that would be equipped to identify deceased persons in certain regions of the country. That initiative was helping to build the capacity of the country's forensic services and was beginning to yield results.

16. The 2013–2018 National Development Plan provided for the compilation of information that would help to identify disappeared and missing persons, and the Ministry of the Interior had units that specialized in finding such persons. The database on disappeared persons that was being developed included information provided by public prosecutors' offices and attorneys general's offices in all states and the Federal District. Working groups had been established in each of those offices to screen and update their records before sending that information to the Office of the Attorney General of the Republic for inclusion in the main database. Out of the total number of persons on which information had been entered into the database between 1 December 2012 and 31 October 2014, over 16,000 had been located, and 96 per cent of those persons had been found alive. Efforts to find the remaining persons continued. The database was still under construction, and much work remained to be done.

17. **Mr. Moreira Valdez** (Mexico) said that the National Conference of Governors had reached a number of inter-state agreements on such matters as the development of a ministerial protocol, specialized care for victims and the establishment of missing persons committees. The states of Mexico had made a commitment to submit bills providing for the certification of declarations of absence by reason of disappearance and to bring their criminal legislation on enforced disappearance into line with international standards. They had also agreed to submit genetic profiles to the Office of the Attorney General of the Republic for inclusion in a national database. Further agreements had been reached on victim protection and the alignment of state legislation with the Victims Act.

18. The Office of the Assistant Attorney General for the Search for Disappeared Persons had been established in the State of Coahuila, along with a state-wide plan to address the issue. Local and federal officials and civil society organizations met regularly with family members of disappeared persons to monitor the progress made in resolving their cases. An independent working group also tracked the progress made in that regard and issued recommendations which had led to the amendment of state laws. A comprehensive assistance programme for the families of victims was in place to prevent their revictimization and to address their needs in such areas as education, housing, health care and employment. More than 200 families had benefited from the programme.

19. **Mr. Hazan**, expressing his appreciation for the participation of the large, high-level delegation, said that the current meeting was just one part of a constructive dialogue that

had begun with the submission of the State party's initial report and would continue with the Committee's concluding observations and recommendations and with the follow-up on those recommendations. Through its work with Mexico in the context of urgent action requests, the Committee had witnessed the desperation of the families of disappeared persons at first hand. The Committee had apprised the Government of its belief that a visit to Mexico pursuant to article 33 of the Convention was called for. While the Committee did not intend to focus exclusively on the events of Iguala, the manner in which the State investigated those events, punished those responsible and ensured that such crimes did not reoccur would be viewed by the entire world as a test of its resolve.

20. Although the report was detailed, it also raised many questions. The Committee's primary concern was the gap between the law, including the Convention and other international standards, and practice in the State party. The purpose of the Convention was to provide guarantees of non-repetition of the crime of enforced disappearance and to counter impunity for that crime. While only past events could come under investigation, the Committee would be working with the State party towards a future free from cases of enforced disappearance.

21. **Mr. Huhle**, referring back to the State party's replies to the list of issues, which had been circulated informally, asked what "substantive units" (*áreas sustantivas*) the Attorney General's Office consulted before responding to the Committee's requests for urgent action. Given the humanitarian nature of cases of enforced disappearance, could the State party respond more swiftly to such requests? What was the status of the discussions concerning the recognition by the State party of the Committee's competence to receive and consider communications pursuant to articles 31 and 32 of the Convention?

22. Could the State party explain how the proposed general law on enforced disappearance, the amendment to article 215 of the Federal Criminal Code and the special laws of some states related to one another? He would appreciate clarification of the meaning of the phrase "give preference to developing a general law in that area", which was used in paragraph 3 of the replies to the list of issues, and would like to know if it implied that laws on enforced disappearance were therefore considered secondary. What strategy was in place for aligning the legislative framework with the articles of the Convention regarding the definition and criminalization of enforced disappearance? It was important to know whether the proposed general law on enforced disappearance would be directly and immediately applicable in all states and in all suspected cases of enforced disappearance. When was that law to be adopted? He would be interested to learn how that law would affect the criminal prosecution system. Would the powers of prosecution remain with the Office of the Attorney General of the Republic, be conferred upon the offices of attorneys general at the state level or be shared between the two? He wondered whether there was an approved draft of the general law for the Committee to consider. Further clarification would be appreciated on the "cooperative system" for determining federal and state jurisdiction mentioned in paragraph 3.2 (c) of the replies to the list of issues. An explanation of the difference between the offices of public prosecutors (*fiscalías*) and offices of attorneys general (*procuradurías*) would also be helpful.

23. Had enforced disappearance been classified as a crime in its own right only once the relevant national laws had been passed or when the State party had assumed the corresponding international obligations, which were immediately applicable under the Constitution of Mexico? Given the continuous nature of the crime of enforced disappearance, could suspects in ongoing trials be charged with that offence as well, or would that be considered as running counter to the principle of legality? He would appreciate further information on the legal provisions under which the failure to prevent an enforced disappearance by a person having a legal obligation to do so constituted a crime. Was that offence defined in the same way in all the states?

24. He would be grateful if the State party would provide copies of the draft bills regarding the criminal responsibility of a superior that were mentioned in paragraph 4 of its replies to the list of issues. Did those draft texts have the Government's backing and were they under consideration? Could the delegation provide information on existing punishments for the offence of enforced disappearance and for the offence of failing to prevent such a crime? Examples of such cases would be appreciated.

25. Were implementing regulations in place for the National Registry of Missing and Disappeared Persons Act and was the Registry actually in operation? How was the distinction maintained in the Registry between cases of enforced disappearance that came under article 2 of the Convention, those covered by article 3, and cases involving disappeared or missing persons that did not fall within the scope of the Convention? How did the State party ensure that all the data in the Registry were generated using the same criteria and methodology at the federal and state levels? He would like to know what criteria were used to update the data. It was a matter of concern, since a case of enforced disappearance persisted as such even after a victim had been found, whether dead or alive, and should therefore remain in the database. The vastly disparate data provided to the Committee over the previous two years demonstrated that the number of disappeared persons in Mexico was unknown and raised questions as to the methods used to compile the figures. Lastly, further details would be appreciated on the work of the Criminal Investigation Agency (AIC).

26. **Mr. Hazan**, referring to paragraph 7 of the State party's replies to the list of issues, asked which authority was responsible for developing the transnational mechanism to be used to search for disappeared persons. Could the State party provide examples of cases in which immediate assistance had been provided to migrants who were threatened or who had disappeared? He would like to know what impact the Beta migrant protection groups and the specialized units of the Attorney General's Office had had in cases where migrants had been victims of enforced disappearance. Could the Committee provide statistics on cases of enforced disappearance involving migrants? He asked whether DNA samples from the families of disappeared migrants had been included in the ante-mortem/post-mortem database. What safeguards were provided to protect migrants in administrative detention from enforced disappearance?

27. He would like to know what the time frame was for the introduction of the amended Federal Code of Criminal Procedure and how the amendments would affect investigations into cases of enforced disappearance. It would be interesting to learn whether the enforced disappearance of members of the armed forces by military personnel would be investigated by the military or the civilian courts. Could the State party provide details on cases currently before the military courts? Where were military personnel suspected of committing an act of enforced disappearance held? In the event that a suspect was held in military facilities, how were the independence of the investigation and unhindered access to legal counsel guaranteed?

28. **Mr. Huhle**, noting with concern that, according to certain sources, the protocol under which special search efforts were to be made during the first 72 hours of a disappearance had not been applied in the case of the events of Iguala, asked when that protocol would be fully implemented. In the meantime, what procedures were followed at the outset of an investigation into a disappearance? He would appreciate information on the number of cases of alleged enforced disappearance in the State party, broken down by state and year, and on the number of investigations conducted and their outcomes.

29. Were there plans to establish a specialized office to deal with enforced disappearances that would be comparable to the Office of the Assistant Attorney General for Organized Crime Investigations? What distinguished the Strategic General Directorate for Human Rights of the Ministry of the Interior from the Executive Commission for

Victim Support (CEAV)? He would like to know why the report of the Special Prosecutor for Social and Political Movements from the Past had not yet been published and whether there were plans to publish it shortly. What was the status of the investigations covered in that report?

30. **Ms. Janina** said that she would like details on the consultations held with civil society during the preparation of the State party's report, including the schedule of the meetings and the recommendations made by civil society. She would like to know the number of cases in which the Convention had been invoked directly by judges at the federal or state level and whether the definition of enforced disappearance in the Federal Criminal Code encompassed disappearances carried out by persons acting with the acquiescence of the State.

31. **Mr. López Ortega** said that he would like to know how many persons were currently being afforded protection measures. He would appreciate further information regarding the steps taken, in accordance with article 14, paragraph 4, of the Convention, to ensure that persons suspected of having committed an enforced disappearance were not in a position to influence the progress of an investigation. He would be particularly interested to know whether a State official could be suspended from his or her duties during an investigation when that official was a suspect. What procedures were in place and which bodies were responsible for applying interim measures of that type? How many public officials were currently subject to such measures? What proportion of all investigations into enforced disappearances concerned State officials? Was it possible to exclude a law enforcement or security force from an investigation into an enforced disappearance when one or more of its members stood accused of the offence? What procedure was followed in such cases and which authority enforced the corresponding measures?

32. **Mr. Yakushiji** said that, in the light of the discrepancies between the data supplied by the Government and by civil society, he would appreciate further information on the efforts being made to provide accurate information on the outcomes of investigations and on the steps taken to prosecute cases of enforced disappearance at the federal and state levels. Were the procedures for holding consultations with civil society going to be improved? How would new legislation on investigations into cases of enforced disappearance be harmonized at the federal and state levels?

33. **Mr. Camara** said that he would appreciate clarification on the organization of the judiciary in the federal system. Since the report mentioned that enforced disappearance was defined as a serious criminal offence in only 19 states, he wondered what the situation was in the others. How was harmonization of national and international legislation ensured, and how was the Convention applied under Mexican law?

The meeting rose at 1 p.m.

United Nations CED/C/SR.120

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
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Committee on Enforced Disappearances
Eighth session

Summary record of the 120th meeting
Held at the Palais Wilson, Geneva, on Monday, 2 February 2015, at 3 p.m.

Chairperson: Mr. Decaux

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Consideration of reports of States parties to the Convention (*continued*)

Initial report of Mexico (continued)

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The meeting was called to order at 3 p m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Mexico (continued) (CED/C/MEX/1 and CED/C/MEX/Q/1)

1. *At the invitation of the Chairperson, the delegation of Mexico took places at the Committee table.*

2. **The Chairperson** invited the delegation to take up the questions posed at the previous meeting (CED/C/SR.119).

3. **Ms. García Laguna** (Mexico) said that, pursuant to constitutional reform provisions enacted in 2014, steps were currently being taken to reorganize the Office of the Attorney General of the Republic to make it independent from the federal executive branch. The reorganized Office would have special powers to investigate human rights violations, including cases of enforced disappearance. As part of efforts to prepare for the transition, staff were receiving specialist training from a wide range of national and international experts. Officials were also analysing past cases of enforced disappearance with a view to making recommendations for improving investigative techniques and formulating a national training programme in that area.

4. On 19 December 2014, the National Council for Public Security had given its approval for the establishment of a standard protocol for the investigation of enforced disappearance. The protocol would define the areas of responsibility and powers of the various investigative authorities, and compliance with it would be mandatory for all of the country's public security bodies and forensic medical services. Consultations were currently being held with organizations of victims' families and experts in order to ensure that the protocol reflected their recommendations as well. For instance, a system would be put in place to monitor the performance of police officials and other government agents and to ensure the participation of victims of enforced disappearance in the investigative process.

5. Under the protocol and pursuant to article 21 of the Victims Act, the competent authorities would be required to take immediate action to locate persons reported as missing. A specialized search unit had already been set up by the Nuevo León state authorities in collaboration with a civil society organization, in accordance with the provisions of the Act. In 2014, its first year of operation, the unit had succeeded in locating over 90 per cent of persons reported missing within 72 hours after the initial notification.

6. In all, 29 people had been placed under the victim and witness protection programme of the Attorney General's Office. That figure included the five individuals who had been placed under protection in response to requests for urgent action from the Committee.

7. With regard to the investigation of state officials in relation to cases of enforced disappearance, she said that, according to information available at the federal level, 313 officials had been indicted and 13 had been convicted to date.

8. The database associated with the National Registry of Missing and Disappeared Persons was populated with information provided by prosecutors' offices of the various states; it had been updated in 2014 in line with standardized criteria aimed at eliminating duplication and inconsistencies. As part of that process, the families of missing or disappeared persons had been contacted in order to verify the reliability of data. While further work was still required to improve the system, it was currently possible to obtain disaggregated data on various aspects, including, for example, cases of enforced disappearance committed by private individuals.

9. Lastly, with respect to the question of foreign migrants reported as missing and believed to have died in Mexico, a forensic committee established in 2014 was working closely with counterpart agencies in El Salvador, Guatemala and Honduras in order to positively identify those persons.

10. **Mr. Zerón de Lucio** (Mexico) said that the Criminal Investigation Agency had been established with the aim of investigating and prosecuting crimes more effectively. To that end, emphasis had been placed on gathering accurate intelligence, collecting reliable forensic evidence and improving inter-agency coordination both nationally and internationally. The Agency's personnel were highly qualified, and its operating standards were fully in line with international good practice.

11. **Ms. Cárdenas Cantú** (Mexico) said that there was currently no single definition of the crime of enforced disappearance in Mexico, as the offence came under the jurisdiction of the courts at either the federal or the state level depending on the authority involved in the commission of the offence. In order to address that issue, the Congress was considering a proposal to introduce a general law of national application for the prevention, investigation and punishment of the crime of enforced disappearance. It was hoped that it would be possible to pass such a law during the current legislature, once the necessary constitutional amendments had been adopted.

12. **Ms. Festinher Arias** (Mexico) said that the proposed general law on enforced disappearance would determine the respective powers of the federal and state governments, define the conduct that constituted enforced disappearance and establish standardized penalties. An interministerial group had been set up to draft the law in accordance with the Convention, with particular attention being devoted in that respect to provisions concerning the definition of the offence, criminal responsibility, the statute of limitations, extradition procedures, judicial guarantees for the accused and access to justice. Consultations would be held in due course with civil society organizations in order to canvass their views.

13. **Mr. Hernández Barros** (Mexico) said that the Executive Commission for Victim Support was a decentralized body which operated with a high degree of independence. Members of the Commission represented the three levels of government in Mexico — federal, state and municipal — and the three branches of government — executive, legislative and judicial. The Commission's responsibilities included delivering immediate support for the victims of enforced disappearance, setting up a national registry of victims, providing legal advice and establishing an aid, assistance and comprehensive redress fund. The Commission was also responsible for formulating, implementing and monitoring public policies that incorporated best practice in victim support. In addition, the Commission worked with civil society organizations to ensure that Central American migrants who had been victims of human rights violations were repatriated and received reparation.

14. **Ms. Peláez** (Mexico) said that the Strategic General Directorate for Human Rights of the Ministry of the Interior was the federal body tasked with liaising with the Executive Commission for Victim Support. The General Directorate was also responsible for working with other public and private victim support organizations, developing the necessary mechanisms for implementing the Victims Act and establishing inter-agency coordination to prevent the violation of victims' rights.

15. Compensation agreements had been reached in 31 per cent of the 275 cases referred to by the National Human Rights Commission in its recommendation No. 26/2011 concerning compensation for victims of human rights violations associated with social and political movements in the 1960s and 1970s. The outstanding cases would be processed as soon as the contact details of the beneficiaries had been confirmed.

16. The Beta migrant protection groups were special units established to protect migrants in transit through Mexico by, for example, delivering humanitarian assistance, providing legal advice and disseminating information on relevant government measures. Specially trained child protection officers of the National Migration Institute were tasked with providing care and support for, in particular, unaccompanied child migrants in transit through the country.

17. **Mr. Beltrán Benites** (Mexico) said that, pursuant to the recently amended Code of Military Justice, cases of human rights violations committed against civilians by military personnel were no longer heard by military courts. Furthermore, cases involving the commission of such violations against military personnel by other military personnel could be heard by civilian courts provided that they had not been committed by personnel in active service. Military prosecutors investigating alleged human rights violations immediately referred all cases that did not fall within the jurisdiction of the military courts to the competent civilian authorities. No cases of alleged enforced disappearance were currently being processed by the military courts. While military personnel facing charges of enforced disappearance were generally held in civilian detention centres, it was possible in exceptional circumstances for the competent civilian judge to order their detention in military facilities. All procedural safeguards were respected regardless of the place of detention.

18. **Mr. Zerón de Lucio** (Mexico), replying to a question raised at the previous meeting concerning the events in Iguala, said that the Office of the Attorney General had taken cognizance of the matter on 26 September 2014.

19. **Mr. Alday González** (Mexico), replying to a question put by Ms. Janina at the previous meeting regarding the participation of civil society organizations in the preparation of reports to treaty bodies, said that the Government systematically held consultations with such organizations both prior to and following the submission of reports. Thanks to those dialogues, it was possible to identify opportunities for establishing road maps for implementing the recommendations of the various treaty bodies. During the preparation of the initial report to the Committee, however, it had proved difficult to engage in such a dialogue with stakeholders because of delays in the drafting process.

20. **Mr. Gómez Robledo** (Mexico) said that, when depositing its instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons, Mexico had made an interpretative declaration stating that the provisions of that Convention would apply to acts constituting the forced disappearance of persons ordered, executed or committed after the entry into force of the Convention for Mexico. At a later date, the Supreme Court had decided that all case law of the Inter-American Court of Human Rights was applicable in Mexico, even that corresponding to cases in which Mexico had not acted as a party. There had subsequently been a series of developments in that regard that could lead to the conclusion that the inter-American Convention was, in fact, retroactively applicable.

21. The recognition by Mexico of the competence of the Committee on Enforced Disappearances to receive individual communications was under active consideration by the Government; however, any such recognition required approval by the Senate.

22. **Mr. Hazan**, referring to the "dirty war" disappearance cases, asked why the Office of the Special Prosecutor for Social and Political Movements of the Past had been disbanded. Inasmuch as the Guerrero Truth Commission had uncovered evidence showing that military orders had been given to carry out acts of enforced disappearance during that period, he wished to know what impact that information had had or was expected to have on the prosecution of those responsible. He also wished to know what impact the

declassified files of security agencies, described in paragraph 40 of the State party's report, had had on the corresponding investigations.

23. He asked whether the State party kept a register of murders, threats or acts of violence perpetrated against relatives of disappeared persons and human rights defenders and whether it had set up a special body to provide protection for witnesses, victims and other persons taking part in judicial proceedings involving enforced disappearance. He enquired as to whether persons of State security agencies who worked as bodyguards for relatives of disappeared persons were provided with special training, given the delicate nature of their position as agents of the State who guarded victims of the State. The sensitization of such personnel was necessary in order to avoid revictimization. He would like to know whether other types of protection measures, aside from bodyguards, were provided in enforced disappearance cases.

24. He asked whether the Federal Act for the Protection of Persons Taking Part in Criminal Proceedings applied solely to cases tried at the federal level or whether the institutions that had been established pursuant to the Act could also be accessed in cases before state courts. If not, had the states enacted similar laws? He wished to know whether any mechanisms were in place to exclude a security force — as a whole — from the conduct of a criminal investigation in cases in which one or more of its members was implicated.

25. **Mr. Huhle** said that he would appreciate additional information concerning the legislative process for the adoption of general legislation of national application, especially in the event that state laws were not consistent with them, as appeared to be the case with the proposed general law on enforced disappearance. He asked whether crimes against humanity could be considered in-service conduct and therefore be tried by military courts or whether such crimes were excluded from military criminal jurisdiction.

26. **Mr. López Ortega** asked how many cases there had been in which State officials had been suspended from their duties as an interim measure and what proportion they represented of the total number of cases investigated.

The meeting was suspended at 4.10 p.m. and resumed at 4.40 p.m.

27. **Mr. Gómez Robledo** (Mexico) said that, even though Mexico had not yet recognized the competence of the Committee under article 31 of the Convention, that did not mean that it failed to provide protection to individuals who had lodged complaints against the State. When it received requests for urgent action from the Committee, it responded to them with the utmost diligence.

28. **Ms. García Laguna** (Mexico) said that the Office of the Special Prosecutor for Social and Political Movements of the Past had been disbanded primarily because it had not been effective. The reasons were that, at the time of its activities, it had had to deal with a very narrowly circumscribed judicial culture and system, which, in turn, had limited its capacity to search for missing persons, identify remains or prosecute offences committed by organized power structures. After the dissolution of the Office, all of the case files on record with it had been transferred to the General Coordinator for Investigations of the Attorney General's Office; they had also been declassified and could be consulted in the national archives.

29. The Office of the Attorney General, through the Federal Investigative Police of the Federal Investigation Agency, had set up a special committee that was responsible for implementing interim and protection measures for victims and witnesses. The staff in charge of carrying out such measures had been trained, and a series of guidelines had been drawn up that expressly referred to the obligation not to revictimize persons being offered protection. Article 4 of the Victims Act made reference to both direct and indirect victims

and was in line with article 24 of the Convention. The Act provided for a high level of protection and was consistent with international instruments relating to victim protection. The Federal Act for the Protection of Persons Taking Part in Criminal Proceedings was, in fact, federal legislation. It was currently being reviewed and was expected to be amended as a result.

30. **Mr. Baltazar Samayoa** (Mexico) said that, under article 10 of the Federal Code of Criminal Procedure, the Attorney General's Office had jurisdiction over offences normally under the states' jurisdiction when such offences were concurrent with and linked to offences that fell under federal jurisdiction, including enforced disappearance. In fact, investigations involving a state or municipal official were not infrequently referred to the Attorney General's Office with the aim of ensuring a more objective and independent investigation.

31. **Ms. Festinher Arias** (Mexico) said that the Human Rights Defenders and Journalists Protection Act had been published on 25 June 2012. Since its adoption, 261 cases had been submitted by human rights defenders and journalists, and 534 persons had benefited from the protection afforded under the Act. In order to give effect to the measures provided for in the Act, a trust fund had been set up with an endowment of nearly US$ 20 million. Measures of protection included panic buttons, bodyguards, armoured cars and the provision of handbooks on protection. In the course of 2014, 161 cases had been submitted to the governing board of the protection and prevention mechanism, which was made up of representatives of various government institutions, including the Attorney General's Office, the Ministry of the Interior, the Ministry of Foreign Affairs and the National Human Rights Commission, as well as civil society organizations. Individuals had received protection in 141 of the 161 cases submitted to the board. The mechanism had been strengthened under a cooperation agreement with Freedom House, an NGO, in September 2013 and the process had been continued in 2014. Plans for 2015 included a capacity-building phase and the preparation of handbooks for journalists and human rights defenders.

32. **Mr. Gómez Robledo** (Mexico) said that the risk assessment methods employed by the mechanism had been upgraded and streamlined so that protection measures could be taken without delay.

33. **Mr. Beltrán Benites** (Mexico) said that, given the grave nature of crimes against humanity, the military criminal justice system did not have jurisdiction to prosecute those crimes.

34. **Ms. Cárdenas Cantú** (Mexico) said that the federal government, on the one hand, and the states, the Federal District and the municipalities, on the other, had concurrent powers. The manner in which those powers were organized was set out in legislation of national application, or the general laws. The 32 federative entities were required to adapt their legislation to the general laws. Whenever a congressional reform became necessary because the Congress had been empowered to adopt a general law in a particular area, the states and the Federal District were temporarily divested of their legislative powers in that area. However, they could continue to discharge other functions relating to the matters to be governed by the law in question. In the case of the proposed general law on enforced disappearance, they could continue to take action to prevent, investigate and punish acts of enforced disappearance.

35. **Mr. Fonseca Leal** (Mexico) said that, in June 2008, amendments had been made to the Constitution with a view to reforming the criminal justice system in Mexico, transforming it from an inquisitorial into an adversarial system. The reform would be phased in over the next eight years by the federal government, the states and the Federal District. To date, 4 federative entities operated fully under the new system, 27 were doing so partially and 1 was expected to comply in 2016. The new justice system was

characterized by the oral, public, transparent, continuous and expeditious nature of procedures, which would help to clear the backlog of cases in the courts.

36. The new National Code of Criminal Procedure established uniform criteria for all states and at all levels of criminal investigation and prosecution with regard to investigations and the protection of victims and witnesses. Among the many important aspects of the new Code were the requirement for the immediate registration of arrests, the presence of a compliance judge to verify the legality of detentions, the ordering of pretrial detention only in exceptional cases and the rule that confessions were admissible only if made before a judge. The new Code was to enter into force for the administration of justice at all levels not later than 18 June 2016.

37. **Ms. García Laguna** (Mexico) said that the reform of the criminal justice system and the move away from an inquisitorial to an adversarial system would have a major impact on the methods of investigation used by prosecution services throughout Mexico. The Attorney General's Office and the offices of the state attorneys general were in the midst of a transformation process that was expected to correct previous structural deficiencies and build capacity for new ways of investigating human rights violations, combating impunity and ensuring the rule of law in Mexico. With regard to enforced disappearance in particular, discussions were under way on the development of a standard protocol for investigations, on the need to harmonize a series of definitions in relation to the offence across agencies and on the importance of strengthening capacity at all levels in order to eradicate that phenomenon.

38. **Mr. Gómez Robledo** (Mexico) said that there were a number of discussions on Mexican social media that seemed to suggest that, had the State party come to the session having recognized the competence of the Committee, the current exercise would have been quite different in that it would have focused on consideration of specific cases. According to article 31 of the Convention, should a State party recognize the competence of the Committee, it would provide observations and comments as requested by the Committee, and communications would be considered. The meetings would be closed, and the views of the Committee would be communicated to the State party and to the authors of the communications. He asked if that interpretation was correct.

39. **The Chairperson** said that the obligations set forth in articles 31 and 32 of the Convention were optional. The Committee was of the view that recognition of its competence to receive and consider communications afforded better protection to the victims of enforced disappearance, but Mexico was not currently bound by those articles. The Committee was careful to keep separate the issues under the different articles.

40. **Mr. Huhle** said that the State party had not yet answered the question on possible measures to address urgent actions in a more timely manner. He asked for clarification on whether crimes such as enforced disappearance and torture could be excluded from military criminal jurisdiction. Article 57 of the Military Criminal Code established exclusions for common and federal offences committed by military personnel on duty, which made that article quite broad and open to interpretation. What measures were in place to limit its interpretation? As for the Iguala case, he would like to know on what basis and under whose authority the preliminary inquiry had been carried out. Why had it taken so long for the Office of the Attorney General to launch its own investigation? Human Rights Watch said that there had been reports of investigators asking victims to carry out investigations and to produce any evidence found. Moreover, he had been surprised to read in the press that the search for the 43 students had led to the discovery of the remains of another 40 persons. Why, in such cases, did the State party not systematically review all the information it had in relation to the alleged locations of mass graves?

41. **Mr. Hazan** said that he would like to know whether the State party had developed a strategy to withdraw the armed forces from the streets and to strengthen the police. Some of the Committee's questions regarding migrants had not yet been answered. With regard to the "dirty war", it seemed that many cases had been referred to different offices and then closed owing to a lack of means to investigate them. Once the new system was in place, would those investigations be resumed? The Committee had also received reports that some requests from the Truth Commission for the declassification of files had been denied; clarification was requested in that regard. He would also like to know whether the protection mechanism for human rights defenders and journalists applied also to the relatives of disappeared persons. Did the State party have a time frame for the implementation of witness protection measures or any information on the time frame for the investigation protocol? Did the State party have any idea when the law on enforced disappearance would be drafted, submitted to the Congress and implemented? Noting that the State party was working with an Argentine forensics team, he asked whether it had any forensics teams of its own. Did the ability of civilian judges to allow members of the military to be held in military prisons constitute a privilege under the Inter-American Convention on Forced Disappearance of Persons?

42. **Mr. López Ortega** said that he would like to know how many officers had been suspended from their duties for having committed an offence. He asked whether article 155 of the Code of Criminal Procedure, which referred to the suspension from duties, was directly applicable by courts at the federal and state levels? In which states was it applicable? He stressed the importance of article 32 of the Convention and asked whether its ratification was being considered by the State party.

43. **Mr. Gómez Robledo** (Mexico) said that Mexico, like many other many States parties to the Convention, was considering the ratification of article 32 but had not yet reached a decision on the matter. The decisions of the Inter-American Court of Human Rights, however, were binding for Mexico, and individual complaints from Mexico were taken to that court once all domestic remedies had been exhausted. The current exercise under article 29 of the Convention was very different from the exercise described in articles 31 and 32 and, even if the State party had recognized the competence of the Committee to receive and consider communications, that would not have affected the current meeting.

44. **Mr. Zerón de Lucio** (Mexico), in response to an earlier question, said that the Iguala case had initially been handled by the state prosecutor but had been subsequently handed over to the Office of the Attorney General because of the link with organized crime. Of the 30 bodies found, 12 had been identified through DNA samples; and 4 had been returned to the families. The Office was making every effort to identify the remaining bodies. Five police officers had been arrested on charges of enforced disappearance in connection with the 30 bodies that had been discovered in mass graves. The Office was taking concrete steps to ensure that all the perpetrators would be tried on charges of enforced disappearance.

45. **Ms. García Laguna** (Mexico) said that there was a new mechanism in place that informed the authorities about reported abductions so that searches could be launched for the missing persons. The State party was working on the establishment of a special unit within the Office of the Public Prosecutor to handle complaints submitted by the relatives of disappeared persons. The State party was using DNA samples from the relatives of disappeared persons to set up a post-mortem database that would be used for identification purposes. The State party was putting together its own national forensics team. Protection measures were implemented as soon as they were requested by the Inter-American Commission on Human Rights. As many family members of disappeared persons had become human rights defenders, the protection afforded to them was provided in great part

by the protection mechanism for human rights defenders. Protection was nevertheless also provided to other victims.

46. **Mr. Baltazar Samayoa** (Mexico) said that article 3.10 of the Code of Criminal Procedure established that the police must provide protection to victims and witnesses. Interim measures could be requested with a view to preventing acts of intimidation directed at witnesses. The Code provided for the temporary suspension from duties of public officials who had been accused of an offence.

47. **Mr. Zerón de Lucio** (Mexico) said that the investigation into the disappearance of the students in Iguala was still under way and that several warrants had been issued. The State party had 95 mobile specialized forensic laboratories, and each state had at least two such laboratories to help identify remains.

48. **Mr. Gómez Robledo** (Mexico), referring to a question about the withdrawal of the armed forces from the streets, said that the military's involvement in the situation was temporary and that steps were being taken to strengthen the police. Mexico had created a new federal police force based on the French model; the force consisted of 5,000 officers and would be expanded in the future. When Mr. Calderón had taken office as President, there had been only 7,000 police officers in Mexico; with the added new force, that number had risen to 45,000. Additional information on measures to improve security and strengthen the police would be provided at the next meeting.

The meeting rose at 5.55 p.m.

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Committee on Enforced Disappearances
Eighth session

Summary record of the 121st meeting
Held at the Palais Wilson, Geneva, on Tuesday, 3 February 2015, at 10 a.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Mexico (continued) (CED/C/MEX/1 and CED/C/MEX/Q/1)

1. *At the invitation of the Chairperson, the delegation of Mexico took places at the Committee table.*

2. **Mr. Hazan** said that he wished to know whether the Government of Mexico considered that article 13 of the Convention constituted an agreement between the States parties in the absence of a specific extradition treaty. Noting that, under Mexican law, extradition would be denied if the person in question had been the subject of an acquittal, pardon or amnesty, he wondered whether that might not pose an unreasonable obstacle to investigations and to cooperation between States. He requested further information about the 28 treaties on mutual legal assistance ratified by Mexico and asked for copies of some of them.

3. Taking note of the fact that federal police officers were required to record arrests in the administrative register established for that purpose, he asked whether a similar requirement applied to state and municipal police forces and to detention in other types of facilities, such as psychiatric institutions and migrant holding centres.

4. He asked whether the delegation believed that the institution of preventive custody, or *arraigo*, put persons at risk of being subjected to enforced disappearance, and he wished to know whether its sphere of application included migrants. The delegation should explain why the difficulty of obtaining evidence for the prosecution of organized crime cases made the use of preventive custody necessary and why that type of difficulty could not instead be resolved by recourse to pretrial detention. He wished to learn more about the current status of the proposed constitutional reform which provided that *arraigo* could be used only in cases of organized crime. Did the executive branch support that reform? He would also like to know whether the changes in criminal procedure referred to during the preceding meeting would involve any changes in the institution of *arraigo*.

5. **Mr. Huhle** said that he felt that the definition of the term "victim" that was contained in the Victims Act and applied by the Executive Commission for Victim Support was well-conceived. He would like to know whether the same definition was also applied by the Office of the Assistant Attorney General for Human Rights, Crime Prevention and Community Services and the Strategic General Directorate for Human Rights of the Ministry of the Interior. He also wished to know how responsibilities relating to victim support were distributed among those three institutions. Did victims of enforced disappearances that had taken place prior to the entry into force of the Victims Act also have access to the benefits provided for in the Act? He would also like to know whether the Executive Commission for Victim Support or some other body conducted an assessment to determine whether a person qualified as a victim even if no investigation had been carried out by the police or prosecution services. He welcomed the Commission's practice of accepting victims' claims in good faith and wished to know whether that had any bearing on prosecutorial investigations.

6. He wondered how victims who did not have Internet access could contact the First Response Unit. He wondered about the fate of victims in states that failed to comply with their obligation to provide first-responder services, and he wished to know whether the register of victims provided for in the Victims Act was used throughout the country. It would be of interest to learn exactly how victims participated in the work of the Executive Commission for Victim Support.

7. He wished to know what type of reparation the Ministry of the Interior had provided to the 87 social and political activists who had thus far received reparation as victims of human rights violations in the 1960s and 1970s and what was hindering the award of reparation to the victims in the other 188 of those cases that were still pending. What were the differences between the national genetic information system, the genetic database maintained by the Attorney General's Office and the new ante-mortem/post-mortem database? Would all three be maintained simultaneously?

8. He asked why the Attorney General's Office did not provide records of its investigations to victims in cases that might involve organized crime. He wished to know whether the proposed amendments of the Federal Act on Transparency and Access to Public Information would curtail victims' right to the truth as currently provided for in the Act. Noting that family members of the victims of the Iguala incident had been searching for their loved ones' remains and had, in some cases, found them, he asked what had been done with those remains and how the Government was supporting those searches. He understood that the National Human Rights Commission had asked the Ministry of the Interior and the government of the State of Guerrero to instruct their staff to abstain from expressing opinions that might revictimize or put at risk the human rights defenders, victims and family members involved in the Iguala incident. What steps would be taken in order to comply with that request?

9. **Mr. Hazan** said that, while the Victims Act did address the State party's obligations under article 24 of the Convention, specific legislation needed to be passed in each state in order for the Act to become fully operational. He would like to know how the Government planned to ensure that its obligations under article 24 were met throughout the country. He also wished to know whether the same requirements concerning the passage of legislation at the state level would apply to the proposed general law on enforced disappearance. Further information would be appreciated on the protocol on searches for disappeared persons currently being prepared by the Attorney General's Office, including its objectives, its current status and the timeline for its entry into force.

10. Noting that migrant children were particularly vulnerable to enforced disappearance, as well as child trafficking, he requested statistics on disappearances of migrant children and asked whether any special preventive action was being taken in the areas near migration routes. Were there any institutions that were equipped to search for and rescue child victims of enforced disappearance or trafficking and return them to their families? It would be of interest to learn whether article 14 of the Inter-American Convention on Conflict of Laws concerning the Adoption of Minors was considered to be a valid legal basis for the annulment of an adoption originating in an enforced disappearance. How were articles 30 and 31 of the General Children's Act applied in such cases? He asked what judicial remedies were available for families seeking the return of a child whose identity had been stolen and who had been taken to a Central American country. Lastly, he wished to know if there were any plans to pass legislation on the prevention of the wrongful removal of children subjected to enforced disappearance and the punishment of persons committing such acts.

11. **Mr. López Ortega**, noting that extensive information had been provided on the legal grounds for refusing to grant an extradition request in cases where the person concerned might be at risk of human rights violations, said that he wished to know whether the same grounds applied to the deportation of foreign nationals and, if so, what procedures were followed and which authority was responsible for determining the level of risk. He wished to know what specific legal provisions governed the maintenance of registers in places of detention, including migrant holding centres, psychiatric institutions and military facilities. What was the time frame for notifying detainees' relatives of their detention and of the location where they were being held? In cases where inmates were transferred to a

different prison, what procedure was used to inform their relatives of the transfer? He asked whether administrative detention was permitted under Mexican law and, if so, whether such detentions were also registered.

12. He was confused by the fact that the Government had cited detention in prison as a possible reason why an individual's whereabouts might be unknown, since, if the individual's relatives were properly informed of the person's arrest, as the State party claimed, then they would have no reason to file a missing person report. He asked the delegation for clarification on that matter.

13. **Mr. Al-Obaidi** said that he wished to know whether there were any training courses that dealt specifically with the Convention and asked how the State ensured that relevant training was provided to security forces and judicial officials at all levels of government.

14. **Mr. Yakushiji** requested further information about the proposed regulatory bill on deportation procedures and about the criteria that would be used to decide whether individuals would be at risk of enforced disappearance if deported. He would like to know whether foreigners subject to a deportation order had the right to petition for *amparo* and what effect the new bill might have on such procedures. An explanation would be appreciated regarding the distinction made between victims of crime and victims of human rights violations in terms of the support and reparation provided to them. He wished to know whether a judgement of the Inter-American Court of Human Rights in which it awarded reparation would have automatic effect in Mexico. Would Views issued by the Committee in which it found a violation of the Convention by Mexico be immediately enforceable? Lastly, he would be interested to learn how many victims of enforced disappearance had received assistance under the Victims Act.

15. **Ms. Janina** asked how many of the 33 bilateral extradition treaties signed by Mexico included enforced disappearance as an extraditable offence. She wished to know whether the State party accepted diplomatic assurances in cases of expulsion, return, surrender or extradition and, if so, under what conditions such assurances might be accepted. Did the Government of Mexico plan to adopt a specific law on the wrongful removal of children who were subjected to enforced disappearance? She would appreciate further information about the local and state criteria for the issuance by the police of an AMBER Alert in the case of a child's disappearance. Had such alerts been successful thus far?

The meeting was suspended at 10.45 a.m. and resumed at 11.20 a.m.

16. **Mr. Fonseca Leal** (Mexico) said that the State party's extradition procedures were in line with international standards. The State party had ratified numerous international treaties on mutual legal assistance, particularly with other countries in the region, which provided for cooperation in the area of extradition. Under those treaties, efforts were made to facilitate forensic research and to assist in locating and identifying disappeared persons. The Cavallo case served as an example of such cooperation at all levels. Decisions regarding the issuance of extradition orders were not based on a set list of offences but rather on the existence of double criminality. Therefore, provided that a crime was punishable by at least 1 year's imprisonment in both countries and an arrest order had been issued by the requesting country, an extradition request could be granted. Following the 2008 constitution reform, *arraigo* orders could be applied only for serious offences or those committed by organized crime and for periods of no more than 40 days (or 80 days under exceptional circumstances). Under a transitional article, existing *arraigo* orders issued by a local court would remain binding until the new criminal justice system entered into force in 2016; after that date, *arraigo* orders could be issued only by federal courts and only in cases involving organized crime. The purpose of *arraigo* was to ensure that the suspect remained

present throughout the investigation and to protect the integrity of evidence, victims and witnesses.

17. **Mr. Gómez Robledo** (Mexico) said that the Government was aware of the international debate surrounding *arraigo* and its potential abuse. The duration of *arraigo* arrangements and the number of persons detained under such orders had decreased significantly; furthermore, only one national centre, which had been visited by the Special Rapporteur on the question of torture, could be used for *arraigo* detention. There were ongoing discussions concerning the elimination of the institution of *arraigo* as well.

18. **Ms. García Laguna** (Mexico) said that the Office of the Special Prosecutor for Women Victims of Violence and Human Trafficking, which was attached to the Office of the Attorney General of the Republic, was responsible for the AMBER Alert Programme. The programme facilitated the search for children in imminent danger and could be activated as soon as the authorities were notified of a disappearance. In 2014, searches were conducted for over 150 children and adolescents, most of whom were found within 72 hours. Social networks were also used by the programme in its searches. Meetings had been convened with various countries in Central America and other parts of Latin America to design a humanitarian policy on unaccompanied migrant children in which priority would be placed on the search for disappeared migrant children. Working groups had been set up on the development of standards, legal assistance, investigations, training and information exchange. Centres for migrant children, including additional centres along migration routes, had been established in all states and were staffed with specialized personnel.

19. Investigative procedures at the federal and state levels for cases involving alleged victims of enforced disappearance were responsive to requests from victims' families and ensured that all lines of investigation remained open. An investigative protocol was being developed that was expected to win congressional approval in the near future. In addition, the authorities often accompanied victims' families in their search for their loved ones' remains and took DNA samples. As one example, searches had recently been carried out in the State of Guerrero, and a number of bodies had been found.

20. A genetic database was under development that would contain information provided by victims and their families, the federal police and its scientific division, and other institutions. A protocol concerning the use of the genetic database by all forensic medical services in the country would be adopted shortly. Training in the area of enforced disappearance had been provided to thousands of officials working in the field of rehabilitation, in the Office of the Attorney General of the Republic and in the federal police force.

21. **Mr. Gómez Robledo** (Mexico) said that many of those initiatives were the result of cooperation with the International Red Cross and the Office of the United Nations High Commissioner for Human Rights.

22. **Mr. Moreira Valdez** (Mexico) said that legislation in the State of Coahuila specifically established the legal obligations to look for disappeared persons and to register all reports of disappeared persons, as well as the duty of employers to hold disappeared persons' posts open for them and to continue to pay their salaries. The positive impact of that legislation had fostered discussions of the possibility of introducing similar laws in other states. The fact that, under Mexican law, people were not required to carry identity documents increased the risk of disappearance or mistaken identity when a person was detained. The Government recognized the problems posed by that situation and was addressing the issue. Furthermore, because not all states provided for a declaration of absence, the general law on enforced disappearance would contain a provision in that respect.

23. **Mr. Baltazar Samayoa** (Mexico), responding to a question as to whether or not it was legal to arrest someone for purposes of identification, said that the law provided for two types of arrest and detention procedures: one applied when a trial was ongoing; the other applied before proceedings had been initiated. During a trial, an arrest warrant was required. In the other case, pretrial detention could be requested only by the Federal Prosecution Service and only in cases of emergency involving serious crimes or cases of flagrante delicto. Any authority found to have arrested and held a person for purposes of identification was therefore acting outside of the law and would face administrative or criminal charges.

24. **Ms. Festinher Arias** (Mexico) said that, under Mexican law, police authorities were required to register all detained persons and to enter all personal details and the times and places of their detention in the log. Guidelines would be drawn up to ensure that the registers were filled out in accordance with article 17 of the Convention.

25. **Ms. Peláez** (Mexico) said that the Executive Commission for Victim Support was the principal national victim support agency. The Office of the Assistant Attorney General for Human Rights, Victim Assistance and Community Services afforded immediate support to victims, particularly with respect to access to justice. The Strategic General Directorate for Human Rights of the Ministry of the Interior monitored cooperation and coordination with other government bodies, encouraged other ministries to launch initiatives to restore victims' rights, and provided material support and accompanied victims to medical centres and meetings with legal counsel. Reparation, which included compensation and other forms of redress, for victims of the "dirty war" had been granted to almost a third of all affected families. Extensive efforts were being made to look for the remaining families so that they could be provided with reparation.

26. **Mr. Hernández Barros** (Mexico) said that the definition of the term "victim", as set out in the Convention, was reproduced in the legislation of 20 states, and the others had been requested to update their legal framework in that regard. The definition contained in the Federal Code of Criminal Procedure was not in conformity with the definition that figured in the Victims Act and did not encompass indirect victims of enforced disappearance. In practice, however, the judicial system had always granted protection to victims' families and allowed them to attend trials. The Victims Act could be applied retroactively and was currently being invoked in cases involving victims of the "dirty war". Under the Act, a person could be classified as a victim on the basis of the findings of national and international human rights bodies and could be granted reparation accordingly. Some cases had been heard in accordance with the principle of good faith as set forth in the Act. In such cases, the objective was not to establish whether or not a person had been subjected to enforced disappearance but rather to provide victims with support and protection. A substantial budget had been earmarked for the payment of financial reparation to victims under the Act, which did not set any limit on the amount of compensation to be paid.

27. The members of the Executive Commission for Victim Support were specialized lawyers. A larger budget was needed so that a sufficient number of lawyers could be engaged to assist all victims. The Commission assigned a lawyer to each victim and used all means at its disposal, including the Internet, to contact and provide support to victims.

28. **Mr. Beltrán Benites** (Mexico) said that only military personnel were subject to the jurisdiction of military courts and that military judges were independent. Civilian laws were also applicable in military court trials, and civilian authorities reviewed decisions handed down by military courts. When a civilian was involved in a military case, the trial was referred to a civilian court of law. Military detention facilities were designed specifically for that purpose and no other military facilities could be used as places of detention. They were monitored by the national human rights ombudsman and by international bodies.

Training had been provided to military personnel in all three branches of the armed forces in line with international standards. Guidelines for military personnel concerning victim support and access to justice had also been amended to conform to those standards.

29. **Mr. Gómez Robledo** (Mexico) said that international standards were directly applicable in the national legal order. Constitutional review was a gradual process that occurred as individual cases were brought before the courts. The Supreme Court, in conjunction with the National Human Rights Commission and the Government, had set up a programme to train a new generation of judges in human rights issues, with a particular focus on how to interpret international treaties. With the assistance of the Inter-American Court of Human Rights, it had also created an online portal that gave judges access to the relevant case law. All the recommendations issued by the human rights treaty bodies since the 1980s had also been compiled. While Mexico was a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the necessary legal amendments had yet to be introduced. Recalling that changes in United States immigration laws had prompted an unprecedented influx of migrants, including children, from Central American countries via Mexico, he said that the Mexican authorities were cooperating with their counterparts to build the capacity of consular offices to protect their nationals abroad.

30. **Mr. Hazan**, pointing out that the restrictions on access to information set forth in articles 13 and 14 of the Federal Act on Transparency and Access to Public Information appeared to be quite broad in scope, asked whether they applied to cases of enforced disappearance and whether it was true that those provisions were used as grounds for refusing to declassify archives. He requested further information on the immediate registration of arrests and detention. He also asked whether the institution of *arraigo* would be abolished in 2016 following the introduction of amendments to the Federal Code of Criminal Procedure or whether that point was still under discussion. Recalling the delegation's statement that having identification documents on one's person was not compulsory, he wished to know what procedures were in place to determine a detainee's true identity and how habeas corpus proceedings worked without a form of formal identification. What steps had been taken to ensure that migrants were aware of the protection mechanisms available to them? He would also like to know whether the Attorney General had adopted separate protocols for the investigation of disappearances and the search for missing persons.

31. **Mr. Huhle**, noting significant discrepancies between official figures and those provided by the Truth Commission, and specifically in reference to the successful searches mentioned earlier by Ms. García Laguna, said that he would like to know how far back the mass graves in the State of Guerrero dated. He remained convinced that victims would be better served by a single victims assistance body, and he would like to know what measures were in place to provide guidance to victims who were seeking help. Referring to reports that victims, especially migrants, had difficulty obtaining assistance when they lacked the requisite documentation, he asked whether those requirements might be tailored to the realities of the situation in which victims found themselves.

32. **Mr. Gómez Robledo** (Mexico) said that, under the criminal codes of nine states, statutory limitations did not apply to cases of enforced disappearance. The institution of *arraigo* would not be abolished under the new criminal justice system; however, discussions on how to limit its use were ongoing.

33. **Ms. García Laguna** (Mexico) said that the requirement that victims had to sign their petitions for *amparo* had been withdrawn pursuant to the constitutional reform. The protocol adopted by the Attorney General addressed both the search for missing persons and the identification of disappeared persons and would be adopted within six months. Providing a series of statistics regarding the exhumation and DNA testing of remains, she

said that exhumations had been carried out by teams of independent experts and had led to the identification of persons who had gone missing as far back as 2000.

34. **Ms. Festinher Arias** (Mexico) said that transparency measures were continuously being strengthened. Although the Federal Act on Transparency and Access to Public Information prohibited the release of information in cases of serious human rights violations and crimes against humanity, the prohibition could be lifted if it were deemed to be in the public interest to do so. The police were required by law to notify the National Information Centre as soon as an arrest was made.

35. **Ms. Peláez** (Mexico) said that one of the objectives of the General Act on the National Public Security System was to prevent the use of incommunicado detention. The fact that there were over 1,500 police units in the country made the coordination of its enforcement difficult, however. Nevertheless, thanks to considerable investments in technology, an electronic platform had been set up to facilitate communication among the various law enforcement agencies. The need for a consolidation of police mandates was under discussion, and the President had submitted a proposal in that connection. One of the purposes of the Victims Act was to make user-friendly services available through the Executive Commission for Victim Support; however, by virtue of the country's federal system, each state also had victim assistance offices. By law, all public servants were required to provide assistance and protection to victims in need. Once basic assistance had been provided, victims were referred to the Executive Commission for registration, legal counselling and other support.

36. **Mr. Huhle**, noting the unprecedented interest generated by the dialogue with Mexico, said that he hoped that the situation in the country would continue to garner external attention. He was confident that the current dialogue marked the beginning of a constructive relationship between the Committee and the State party.

37. **Ms. García Laguna** (Mexico) said that the Government recognized the seriousness of the issue of enforced disappearance and that it was committed to meeting the needs of victims.

38. **Mr. Gómez Robledo** (Mexico) said that he trusted that the make-up of the delegation, and especially the presence of the President of the National Human Rights Commission, had demonstrated the Government's determination to tackle the issue of enforced disappearance. It was well aware of the challenges, was keen to receive the Committee's recommendations on how to improve the country's legal framework and its victim assistance services, and looked forward to the continuation of its dialogue with the Committee.

39. **The Chairperson** said that the Government was to be commended on the level and diversity of the delegation. The Committee wished to reiterate its heartfelt appreciation for the participation of NGOs and relatives of disappeared persons, whose input had informed the dialogue with the State party.

The meeting rose at 12.55 p.m.

United Nations CED/C/SR.122

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
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Committee on Enforced Disappearances
Eighth session

Summary record of the 122nd meeting
Held at the Palais Wilson, Geneva, on Tuesday, 3 February 2015, at 3 p.m.

Chairperson: Mr. Decaux

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Armenia

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Armenia (CED/C/ARM/1 and CED/C/ARM/Q/1)

1. *At the invitation of the Chairperson, the delegation of Armenia took places at the Committee table.*

2. **Mr. Poghosyan** (Armenia), introducing the initial report of Armenia (CED/C/ARM/1), said that, since the beginning of its journey towards independent statehood, Armenia had opted for the establishment of a democratic society based on the rule of law. Armenia had signed a number of international instruments, including several core human rights treaties. Since its first review under the universal periodic review process, Armenia had made significant progress in giving effect to its human rights obligations by enacting numerous laws, embarking on reform in different areas and adopting a series of national action plans.

3. The initial report of Armenia to the Committee on Enforced Disappearances had been prepared by the Police of the Republic of Armenia. Relevant stakeholders, including governmental institutions and the Office of the Human Rights Defender of Armenia, had had the opportunity to contribute comments. The report had been made public for further consultation by civil society before its finalization and submission to the Committee in October 2013.

4. No cases of enforced disappearance had been registered in Armenia. Although enforced disappearance was not defined as a separate offence in the Criminal Code, certain provisions of the Constitution, the Criminal Code and the Code of Criminal Procedure contained elements of the definition of enforced disappearance. Moreover, the Constitution and national law provided for the direct application within Armenian territory of the international treaties to which Armenia was a party, which meant that individuals and other relevant stakeholders could invoke their provisions directly.

5. The wording of the article on enforced disappearance that was proposed for inclusion in the Criminal Code was fully in line with the definition set out in the International Convention for the Protection of All Persons from Enforced Disappearance and had been published on the official website of the national police for the purposes of public scrutiny. A second draft article prescribed sanctions for acts of enforced disappearance of a widespread or systematic nature; following adoption, it would be inserted into section 33 of the Code under the heading of crimes against humanity and peace.

6. **Ms. Janina** said that she would like to know whether, during the preparation of the report, the State party had engaged in broad-based consultations with civil society, as was encouraged in the reporting guidelines prepared by the Committee. She asked how Armenian citizens could exercise their constitutional right to apply to international bodies for the protection of their human rights if the State party had not recognized the Committee's competence to receive and consider individual communications. Was the State party considering making the declarations on competence provided for in articles 31 and 32 of the Convention? She would appreciate an explanation of how the Convention was directly applied by the Armenian courts.

7. In relation to paragraph 29 of the report, she requested detailed information on the legal or other measures in force to ensure that the prohibition against enforced disappearance could not be abrogated or restricted under any exceptional circumstances, including external or internal states of emergency. In the context of states of emergency or other exceptional circumstances, did national law provide for derogation from any other

rights provided for in national legislation in compliance with international human rights instruments to which Armenia was a party and which might be relevant for taking action against enforced disappearances? If that was the case, the delegation should enumerate the rights or procedural safeguards that could be derogated from, under which circumstances, according to which legal provisions and for how long.

8. Given that enforced disappearance was not defined as a separate offence in the Criminal Code, she asked whether the common elements of that offence that were contained in chapters 17 and 33 of the Code carried penalties that were commensurate with the gravity of the offence of enforced disappearance. She would be interested to know the current status of the draft amendments to the Code that defined enforced disappearance as a separate offence; how the amendments would be given effect following their adoption; and whether the State party's position that the placement of a person outside the protection of the law was a binding element of the definition of enforced disappearance would be reproduced in the draft amendment. She asked whether the draft amendments to the Code would include a definition of enforced disappearance as a crime against humanity and, if so, on what elements it would be based and to what extent it would comply with article 5 of the Convention.

9. She said she would like to receive additional information on how the State party prohibited and prosecuted the acts defined in article 2 of the Convention when committed by persons or groups acting without the authorization, support or acquiescence of the State. She enquired as to whether the State party had made any progress in terms of becoming a signatory to the Rome Statute and whether it had identified any challenges in doing so.

10. With reference to paragraph 56 of the report, she requested an explanation as to how article 47 of the Criminal Code was consistent with article 6 of the Convention. She asked whether there would be a review of that provision, which allowed for the invocation of any order or instruction from any public authority in order to justify a crime. She would appreciate receiving more precise information on the difference between grave and extremely grave offences and the penalties prescribed for each. She asked whether the penalty laid down in the draft amendments to the Code provided for mitigating and aggravating circumstances in the context of enforced disappearance. She requested further clarification of the difference between a continuous and a continuing crime. Which one applied to the crime of enforced disappearance? She enquired as to whether the draft amendments to the Code provided for a statute of limitations. She would like for the delegation to elaborate on the statement made in paragraph 71 of the report to the effect that the issue of the application of the statute of limitations with regard to a person who had committed a criminal offence that was punishable by life imprisonment would be settled by the court. By means of what procedure did Armenian courts arrive at such a decision?

11. **Mr. Camara** asked whether, in the event that an international treaty contradicted the Constitution and could therefore not be ratified, as noted in paragraph 12 of the report, the Constitution could be amended to allow the ratification or whether there were other solutions to that problem.

12. With regard to the competence of the national courts to hear cases of foreign nationals and stateless persons not permanently residing in Armenia who had committed a criminal offence outside Armenian territory, he asked whether the two conditions listed in paragraph 77 of the report were cumulative or if only one had to be met in order for Armenian courts to prosecute such persons. As to the competence of the Armenian authorities to arrest a person residing in Armenia who was suspected of having committed a crime in the territory of a foreign State with which Armenia had an agreement for the provision of legal assistance in criminal matters, he wished to know what happened when Armenia did not have such an agreement with the foreign State, particularly in cases where the person was suspected of having committed the crime of enforced disappearance. He

asked whether the Code of Criminal Procedure prescribed legislative, regulatory or administrative measures that would enable the Armenian courts to immediately open an investigation if a person suspected of having committed an act of enforced disappearance was found on Armenian territory. He enquired as to whether there were any provisions or mechanisms to ensure that, in cases of enforced disappearance, suspects could not influence the corresponding investigation, particularly if the suspects were members of the police or the armed forces.

13. With regard to the question of extradition, he asked what happened in cases where the extradition of a person suspected of having committed an act of enforced disappearance was requested by a State with which Armenia did not have an extradition treaty. Could extradition be denied by Armenia on grounds of diplomatic or other immunity? Given that Armenia could deny extradition if the requested person was likely to be prosecuted in the requesting State on the grounds of his or her political beliefs, race or religion, he wondered whether extradition could be denied in the case of enforced disappearance. If that was the case, that policy ran contrary to article 13 of the Convention, which stated that, for the purposes of extradition, the crime of enforced disappearance could not be regarded as a political offence or as an offence inspired by political motives. He asked whether there had been cases in which the Convention or another international agreement had served as the basis for an extradition in the absence of an agreement between Armenia and the requesting State.

14. He enquired as to whether the agreements for mutual assistance in criminal matters described in paragraph 120 of the report were consistent with the Convention, particularly concerning the prosecution and extradition of alleged offenders found on Armenian territory and concerning the provision of assistance to victims.

15. **Mr. López Ortega** asked for information on the role played by the Prosecutor General's Office and the judiciary in criminal investigations and, in particular, whether those bodies oversaw investigations conducted by the National Security Service and the police, including investigations into alleged cases of enforced disappearance. He requested details concerning the position of the National Security Service and the police in the government hierarchy, namely, whether they were attached to the executive branch or whether they had organizational autonomy. He wished to know in which circumstances commanders of military units could conduct investigations, which crimes they could investigate, which body had competence to oversee their investigations and whether those commanders were combat personnel or military staff with legal backgrounds. If they were staff with legal backgrounds, he wished to know the level of their organizational independence. He also wished to know whether the courts that heard cases that had been investigated by military commanders were lower courts and whether they were single-judge or collegiate courts. If they were collegiate courts, were they composed solely of professional judges or a mixture of professional and lay judges? Lastly, what guarantees were there in the State party to ensure the independence of the judiciary?

16. **Mr. Al-Obaidi** said that he would appreciate clarification concerning the information provided in paragraph 53 of the report, which indicated that, in the cases provided for in articles 34 and 35 of the Criminal Code, a person could be held responsible for an attempted offence or for the preparation of an offence. He asked how the State party envisaged investigating the intention to commit a crime of enforced disappearance. It was unclear how such investigations could lead to the suspect's arrest, given that, in some cases, an act of enforced disappearance could begin with a legitimate act.

17. **Mr. Corcuera Cabezut** asked whether the Constitutional Court had ruled on the compatibility of the Convention with the Armenian Constitution. He wished to know whether any changes had been made to the wording of the draft amendment to the Criminal Code, which contained a definition of enforced disappearance and was set out in the annex

to the replies to the list of issues that had been circulated informally. If changes had been made to the definition subsequently, he would be interested to know what they were. He asked for clarification regarding the discrepancy between what was stated in paragraph 32 of report and the text of the draft amendment as set out in the annex. In the former, one of the binding elements of an act of enforced disappearance was the placement of the person outside the protection of the law, whereas, in the latter, such placement was a consequence of the crime of enforced disappearance.

18. Although the State party could not provide examples of cases of enforced disappearance in which the provisions of the Convention had been invoked directly in Armenia, owing to the lack of such cases, he asked whether other provisions of the Convention, such as those providing for a range of preventive measures, had been directly invoked by the courts.

19. **Mr. Yakushiji** said that he would welcome clarification on the difference between a continuous crime and a continuing crime. Based on the State party's written replies to the list of issues, it appeared that the crime of enforced disappearance continued until the perpetrator had been captured or had surrendered. If so, when did the statute of limitations begin to run? Also, if the punishment imposed on a perpetrator could not be more severe than the punishment that would have been handed down in the country where the offence had been committed, that might undermine the State party's obligations under article 7, paragraph 1, of the Convention. For example, if a perpetrator who had committed a crime in a country that had not ratified the Convention were discovered in Armenia and not extradited, how would the State party fulfil its obligation to extradite or prosecute? He also asked whether members of the military were included in the bodies envisaged in article 190 of the Code of Criminal Procedure. Finally, he asked whether extradition was conditional on the existence of an extradition treaty with the country concerned. If so, with how many countries had Armenia concluded such treaties?

The meeting was suspended at 3.55 p.m. and resumed at 4.25 p.m.

20. **Ms. Melikyan** (Armenia), referring to articles 31 and 32 of the Convention, said that the State party was considering declaring that it recognized the competence of the Committee to receive and consider communications and that a declaration would be submitted to the parliament for adoption. In response to an earlier question, she said that the Constitution established that all persons had the right to apply to international bodies for the protection of their rights and freedoms. Armenia had already recognized various individual complaint procedures, and persons could apply to, inter alia, the European Court of Human Rights for the protection of their rights.

21. As to the place of treaties in the national legal system, the Constitution provided that international treaties, once ratified, were an integral part of the Armenian legal system and were directly applicable. In other words, courts, institutions and individuals could refer to the provisions of international treaties, including those of the Convention, even if those provisions had not been incorporated into national legislation.

22. Armenia had signed the Rome Statute in 1998, but had suspended the ratification process when the Constitutional Court had found that some of its provisions were inconsistent with the Constitution. The State party was currently in the process of amending its Constitution, and the concept paper on the constitutional reforms, which had already been made public, stated that the reforms must create preconditions for the ratification of the Rome Statute. International treaties were directly applicable provided that their provisions were not incompatible with those of the Constitution. The draft amendment to the Criminal Code that was annexed to the State party's written replies had already been reviewed by the Constitutional Court.

23. Referring to a question from Mr. Camara, she said that the State party could not commit to including provisions of the Convention in its draft treaties as the other parties to those treaties would have to agree to the text. Armenia had concluded 12 bilateral agreements on mutual legal assistance in criminal and civil matters and had ratified 6 multilateral conventions. It had also entered into nine bilateral and three multilateral extradition treaties.

24. **Mr. Tumanov** (Armenia) said that chapter 54 of the Code of Criminal Procedure regulated legal assistance in criminal matters in accordance with international agreements. Article 492 of the Code stated that a person could be arrested if he or she was suspected of having committed an offence in a country with which Armenia had signed an agreement on mutual legal assistance in criminal matters. In such cases, the person would be extradited to the other country at the request of the competent authority. Chapter 54 of the Code regulated legal assistance in criminal matters in the absence of such agreements; in exceptional cases, arrangements for the execution of a foreign judgement in Armenia could be made through diplomatic channels. The Code did not, however, include a detailed procedure for that, and the State party had never invoked that provision. The State party had never received any requests for extradition in association with a case of enforced disappearance.

25. **Ms. Avoyan** (Armenia), in response to questions that had been raised by Ms. Janina, said that there was a website on which draft versions of legislation and reports were posted for public consultation. In principle, suggestions or comments could lead to further discussion and even amendment of the texts. As the draft version of the State party's report had not elicited any response from civil society, it had been forwarded directly to the relevant State bodies and the Office of the Human Rights Defender.

26. Replying to questions that had been raised by Mr. Corcuera Cabezut, she said that the draft amendment to the Criminal Code was currently being discussed by the relevant State bodies and had been posted online for public consultation. The text annexed to the written replies to the list of issues was the current version. The definition of enforced disappearance that appeared in that version referred to the placement of a person outside the protection of the law as a result of an act of enforced disappearance.

27. A continuous crime was a criminal offence that was still in progress and had not yet ended, whereas a continuing crime referred to a series of acts that were interconnected and related to the same criminal intent. Enforced disappearance was considered a continuous crime unless the crime had ended, for example, if the perpetrator had been found or had died. In such cases, the statute of limitations began to run on the date the crime had ended.

28. The Criminal Code established different punishments for grave and extremely grave offences. Punishment for grave offences could not exceed 10 years' imprisonment, whereas extremely grave offences were punishable by more than 10 years' imprisonment or life imprisonment. The draft amendment to the Code defined an act of enforced disappearance as a grave offence, unless it had been committed under aggravating circumstances, in which case it was considered an extremely grave offence. Cases of systematic enforced disappearance, for instance, constituted an extremely grave offence. Other provisions of the Code applied to acts of enforced disappearance that had been committed by persons who did not hold a State position or had not acted with the authorization, support or acquiescence of the State.

29. In response to a question regarding the direct application of the provisions of the Convention by the Armenian courts, she said that an offence was subject to punishment only if it was included in the Criminal Code.

30. **Mr. Abgaryan** (Armenia), in reference to a question regarding the non-derogability of the Convention, said that article 16 of the Constitution guaranteed the right to liberty and

that persons could be deprived of their liberty only as prescribed by law. Therefore, given that acts of enforced disappearance deprived persons of their liberty and were not prescribed by law, they were already prohibited under the Constitution, which had primacy over all other laws and was applied directly. Referring to another question, he said that the legislation pertaining to a state of emergency or war did not establish exceptions regarding the deprivation of liberty.

31. Turning to the question of whether investigations into enforced disappearance were carried out by the military authorities, he said that military personnel conducted only preliminary inquiries and solely in respect of offences committed on military territory or involving fixed-term military personnel. Subsequent investigations were handled by other authorities, including the State security service, which had particular responsibility for investigating cases of enforced disappearance. Under proposed legislation, State security investigators would also be responsible for preliminary investigations currently conducted by the military.

32. Under current legislative arrangements, cases of enforced disappearance committed by persons other than State officials were dealt with under various articles of the Criminal Code, in particular articles 131 and 133, which related to abduction and illegal deprivation of liberty respectively.

33. As to whether a State body could be excluded from an investigation into a case of enforced disappearance allegedly committed by a member of that body, he said that, should such a situation arise, investigative responsibility would be transferred from the special investigative service — the body usually responsible for such matters — to the State security service.

34. With regard to the question of whether it was possible to arrest a person suspected of intending to commit a crime of enforced disappearance, he said that a person could be detained when there was reasonable cause to believe that he or she was preparing to commit such an offence or there was sufficient evidence to bring charges against the individual concerned.

35. In cases of enforced disappearance committed by foreign nationals or stateless persons, those persons could be held criminally responsible for offences committed on the territory of Armenia or on board a ship or aircraft registered in Armenia.

36. **Mr. Camara** said that the lack of a specific criminal offence of enforced disappearance in the State party's legislation raised two key issues: the range of penalties available to the courts and the duration of the statute of limitations. As to penalties, it was his understanding that under the Armenian Criminal Code enforced disappearance could in some instances be assimilated to an offence constituting a grave offence punishable by a prison term of from 2 to 5 years. Such penalties were clearly not in line with either the spirit or the letter of article 7 of the Convention, which required States parties to provide appropriate penalties that took into account the extreme seriousness of the offence of enforced disappearance. He encouraged the State party to ensure that the penalties provided for the crime of enforced disappearance in future legislation were in full accordance with the Convention.

37. With regard to the statute of limitations, he said that the current situation, under which the period applicable was either 10 or 15 years depending on the classification of the offence in question, was unsatisfactory and should be remedied. He recalled that, under article 8 of the Convention, States parties were required to ensure that the term of limitation was of long duration and proportionate to the seriousness of the offence of enforced disappearance.

38. He said that he would like to know whether the Office of the Human Rights Defender was an independent body and whether its head was elected or appointed.

39. **Ms. Janina** said that she would appreciate replies to her earlier questions regarding the compliance of the Criminal Code with article 6 of the Convention and the powers of courts to decide on issues relating to the application of the statute of limitations in respect of certain offences.

40. She welcomed the willingness of the State party to move forward with making the declarations provided for in articles 31 and 32 of the Convention concerning the competence of the Committee to receive and consider individual and inter-State communications. She stressed that by making those declarations the Government would be able to give full effect to individual rights enshrined in the Constitution.

41. In view of the lack of comments on the State party's report from civil society organizations, she said that the Government should consider ways of raising public awareness of the Convention and of encouraging greater involvement by civil society in the preparation of future reports.

42. With regard to the draft law supplementing the Criminal Code, she urged the State party to make every effort to ensure that the text would be interpreted as meaning that the placing of a person outside the protection of the law was a consequence of the offence of enforced disappearance, not a constitutive element thereof.

43. **Mr. Huhle**, noting the delegation's assertion that there had been no cases of enforced disappearance registered in the State party, asked how the Government went about collecting information in that regard and, in particular, whether it consulted the Office of the Human Rights Defender and unofficial bodies.

44. **Mr. Corcuera Cabezut**, noting that the delegation had stated that the death of the perpetrator of an offence of enforced disappearance might result in the closure of the related investigation, said that it was important to bear in mind that an investigation should serve not only to establish responsibility and punish the guilty but also to ascertain the facts of a case. In that connection, he recalled article 24, paragraph 6, of the Convention, which required States parties to continue investigations until the fate of the disappeared person had been clarified. He would therefore like to know whether the authorities would continue to investigate a case of enforced disappearance in the event of the death of the suspect.

45. **Mr. Hazan** said that he would welcome further details on the special investigative service, in particular regarding the authority under which it operated, the organization of the service, the scope of its investigative powers and the training received by its staff.

46. **Mr. López Ortega** said that he would like to have further clarification regarding investigations into cases of enforced disappearance carried out by military authorities. In particular, he asked the delegation to explain what was understood by the terms "military territory" and "fixed-term military personnel". He would also like to have details regarding the exact nature and duration of such preliminary military investigations. Lastly, he asked whether those investigations were a prerequisite for an investigation by the State security service or whether the latter body could initiate an investigation ex officio.

47. **Mr. Al-Obaidi**, referring to the draft law supplementing the Criminal Code, said that the State party should give consideration to providing for specific procedures for investigating the offence of enforced disappearance.

The meeting rose at 5.55 p.m.

United Nations CED/C/SR.123

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
11 February 2015

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Committee on Enforced Disappearances
Eighth session

Summary record of the 123rd meeting
Held at the Palais Wilson, Geneva, on Wednesday, 4 February 2015, at 10 a.m.

Chairperson: Mr. Decaux

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Consideration of reports of States parties to the Convention (*continued*)

Initial report of Armenia (continued)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Armenia (continued) (CED/C/ARM/1 and CED/C/ARM/Q/1)

1. *At the invitation of the Chairperson, the delegation of Armenia took places at the Committee table.*

2. **Mr. Abgaryan** (Armenia), responding to a question posed earlier by Mr. Camara, said that the punishments provided for in Armenian law for acts of enforced disappearance were not commensurate with the seriousness of the crime. As it stood, if such a crime were brought to the attention of the authorities, the suspect would be charged under the Criminal Code of the Republic of Armenia with offences corresponding to different elements of the act of enforced disappearance, rather than with the offence of enforced disappearance as such. However, amendments to the Criminal Code, which were currently in the drafting and consultation phase, would classify it as a separate offence. The amendments still fell somewhat short of the mark, however, since, although they set out rigorous punishments for the offence of enforced disappearance, they categorized it as a "grave" offence, rather than as an "extremely grave" offence. The definition set out in article 2 of the Convention was addressed by article 391 bis of the draft amendments. The new text might also resolve the issue of the statute of limitations since, although the law stipulated that the statute would enter into effect 15 years after the commission of the crime, the courts would be able to decide whether to apply it or not.

3. Turning to an earlier question about cases in which an official had issued an order that had resulted in an enforced disappearance, he said that only that official would be held accountable unless the order was manifestly unlawful, in which case the person carrying out the order would also be brought before the courts.

4. Regarding the involvement of civil society in the formulation of amendments to the Criminal Code, it should be noted that the drafts of such amendments, as well as the State party's report to the Committee, were posted on the website of the Police of the Republic of Armenia in order to ensure that members of civil society were informed of new developments and could comment on them, thus helping to identify and address gaps in the legislation before it was adopted. The views and concerns of civil society were invariably taken into account in the development of new legislation.

5. As to the doubts raised earlier about the difficulty of tracking cases of enforced disappearance in the absence of legal provisions dealing specifically with that offence, such cases were monitored by examining the data on all crimes stored in the central police database. That information made it possible to clearly identify cases of enforced disappearance.

6. The agency tasked with investigating cases of enforced disappearance was an independent authority. Its director was appointed for a term of six years by the President in consultation with the Prime Minister, and it was staffed by a core team of highly experienced investigators. In-service training was provided on a regular basis to upgrade the skills of investigators and the police.

7. In the preceding meeting, there had been a misunderstanding regarding the way that crimes committed in military units were handled. The law provided that the authority to investigate crimes committed by military personnel was to be determined on the basis of the type of crime concerned. In all cases, criminal proceedings could, of course, be instituted upon disclosure of a crime without the need to conduct preliminary investigations, whether the case involved the military or not.

8. **Ms. Avoyan** (Armenia), responding to an earlier question, said that, in line with article 2 of the Convention, the draft amendments to the Criminal Code established that the placement of a person outside the protection of the law was inevitably a consequence of the crime of enforced disappearance. As for the earlier confusion regarding the delegation's explanation about the action taken in respect of a continuous crime, under Armenian law, such a crime comprised a situation in which the criminal act in question had ended but the corresponding criminal situation persisted. Thus, in all cases of enforced disappearance, the investigation continued until the victim's whereabouts were discovered. The explanation given during the preceding meeting had focused on the termination of the crime, not of the investigative process.

9. **Ms. Melikyan** (Armenia), in response to an earlier question about the need for a separate law on the investigation of cases involving enforced disappearance, said that she would like to clarify the fact that, while international treaties had primacy over other laws and were directly applicable in the State party, a separate law was needed in order to define the investigative methods to be used and the specific punishments to be imposed.

10. The Human Rights Defender in Armenia was elected by Parliament. The person holding that post worked independently but in close cooperation with local governments and civil society. While NGOs had not been directly involved in consultations on the draft amendments, comments from NGOs had been transmitted through the Human Rights Defender and were being taken into consideration.

11. **Mr. Camara** asked whether Armenian legislation provided for any exception to the principle of non-refoulement as set out in article 16 of the Convention. Did the State party envisage amending its laws in order to align them with the principle of non-refoulement in cases where persons would be in danger of being subjected to enforced disappearance in the country to which they would be returned?

12. He would be interested to learn what the legal requirements were concerning the registration of arrests and detentions, whether anyone could access those registers other than the competent authorities and which authorities were responsible for ensuring that those registers were kept up to date. What types of penalties were provided for in cases where the police failed to record all the pertinent details in the register? He would be grateful if the delegation would describe the procedures used when transferring a detainee from one centre to another, including the procedures pertaining to the notification of family members, doctors and lawyers. Under what conditions was a "forcible placement" in a medical or correctional institution permitted? When a member of the military was detained, was his or her family informed? Lastly, he wondered whether the draft law on the protection of personal data dealt specifically with data protection issues in cases of enforced disappearance.

13. **Ms. Janina** asked how the independence of the Human Rights Defender was guaranteed and what budget was allocated for the Defender's work. Did the Office of the Human Rights Defender also perform the functions of the national preventive mechanism? Was the Office authorized to receive complaints regarding cases of enforced disappearance and, if so, had any complaints been submitted? It was her understanding that there were plans to establish a separate ombudsman for members of the armed forces. What powers would be conferred upon the person holding that post? She would appreciate further details on the training provided to military and judicial personnel. She would also like clarification on the legal definition of a victim of enforced disappearance and wished to know which authority was empowered to declare that a given person was a victim of that crime. What legal provisions were in place to safeguard the right of victims of enforced disappearance and their families to know the truth and to participate in legal proceedings? What measures had been adopted to ensure that every effort was made to search for and locate disappeared persons in conformity with article 24, paragraph 3, of the Convention? She would like to

know what non-financial forms of reparation and social rehabilitation services were offered to victims.

14. She wondered whether the amendments to the Criminal Code would include a specific definition of the crime of the wrongful removal of children in accordance with article 25 of the Convention. Would the delegation please explain how the best interests of the child were protected under Armenian law and describe the measures taken to ensure that children who were capable of forming their own views could express those views freely?

15. **Mr. Yakushiji**, referring to article 24 of the Convention and articles 1058 and 1064 of the Civil Code of the State party, said that he would be interested to learn whether the family of a disappeared person could claim damages while the whereabouts of the person remained unknown. The definition of the term "victim" set out in the Code of Criminal Procedure excluded family members of a direct victim unless that victim was dead or unable to express his or her will. Were there plans to amend that rather narrow definition? He wished to know whether there was any administrative procedure whereby the families of disappeared persons could exercise their right to know the truth.

16. **Mr. Hazan** asked whether an adoption could be annulled when it had originated in the enforced disappearance of the parents and whether, in such cases, children could be placed with relatives instead of becoming wards of the State.

17. **Mr. Al-Obaidi** said that he wondered how the State party could prosecute persons for carrying out an enforced disappearance abroad when it was not an offence under Armenian law. Paragraph 141 of the report appeared to imply that genetic data could be used for purposes other than those outlined in article 19 of the Convention. In reference to article 21 of the Convention, he wished to know how the authorities ensured that persons deprived of their liberty were actually released when they were supposed to be.

18. **Mr. Corcuera Cabezut** asked whether the family of a disappeared person could exercise that person's rights without having to obtain a certificate of presumption of death or whether the legal framework forced them to relinquish their right to presume that the person was still alive.

The meeting was suspended at 11 a.m. and resumed at 11.20 a.m.

19. **Ms. Melikyan** (Armenia) said that, although the Office of the Human Rights Defender was financed by the State budget, the Office was free to allocate the funds as it saw fit. It had unimpeded access to all government institutions, including places of detention, without prior notice and had the authority to interview individuals and propose legislative amendments. Although the Human Rights Defender had been involved in the preparation of the report, no information had been provided on any cases of enforced disappearance. The establishment of a military ombudsman was envisaged under the National Strategy on Human Rights Protection, but the status of the proposal, which was to have been submitted by the end of 2014, was unknown.

20. **Mr. Tumanov** (Armenia), acknowledging that the Criminal Code did not yet contain a definition of enforced disappearance, said that, if an extradition request based on that offence were received, the authorities would consider all the elements comprising enforced disappearance that were offences in Armenia and make their decision on that basis. There did not have to be an exact correspondence between the law of the requesting country and that of Armenia.

21. **Mr. Abgaryan** (Armenia) said that, under the Constitution, persons could be deprived of their liberty only as prescribed by law and that any deviation from that principle was deemed to be unlawful detention, which was considered to be a form of enforced disappearance. Although there had been no reports of failures to maintain detention

registers properly, the maintenance of registers and detention conditions were monitored by parliamentarians, the Prosecutor General, the Human Rights Defender and civil society organizations. The transfer of inmates from one centre to another was regulated by law, and inmates had the right to inform the person of their choice of their new location. Persons were placed in psychiatric facilities by court order if they were deemed to be a threat to society. When military personnel were detained, their families were always notified first and, where appropriate, their commanding officers were then notified. The legal status of victims and the designation of victims' legal successors were governed by the Code of Criminal Procedure and were determined by the courts. Law enforcement officers, the judiciary and members of the military received training regarding national and international human rights standards as they related to their particular functions.

22. **Ms. Avoyan** (Armenia) said that the Criminal Code set out penalties for offences such as the sale of children and adoption under false pretences, while the Family Code provided for the court-ordered annulment of adoptions under specific circumstances. Nevertheless, the amendments to the Criminal Code would address the situation of disappeared persons' children. Under the Family Code, relatives were given priority in the adoption of disappeared persons' children, and alternative arrangements were considered only if that first option was unsuccessful. The views of children over 10 years of age were taken into consideration in adoption proceedings. In addition to compensation, victims of enforced disappearance were entitled to the provision of basic necessities, medical services, rehabilitation services, accommodation and legal aid. In keeping with the principle of non-refoulement, the law prohibited the deportation of persons, including those residing in Armenia unlawfully, to countries where there was a risk of torture.

23. **Mr. Tumanov** (Armenia) said that Armenia was a party to the Convention relating to the Status of Refugees and thus recognized the principle of non-refoulement. Departures from that principle might be made in some cases, however, if an individual posed a threat to national security or a danger to society.

24. **Mr. Camara** asked whether the 72-hour limit on the duration of police custody could ever be extended. He wished to know whether Armenian law contained any provisions restricting the right to information as it pertained to the relatives or legal counsel of detainees, or whether such restrictions could be instituted at the discretion of police officers or public prosecutors. He requested clarification on the distinction made in article 142 of the Criminal Code between imprisonment and placement in detention.

25. **Ms. Janina** asked whether the Government would take under advisement the Committee's recommendation concerning the amendment of article 329 of the Criminal Code, which could pose an impediment to persons seeking international protection. She would also like to know whether Armenia accepted diplomatic assurances when returning asylum seekers to their countries of origin and wished to know how the State followed up on those cases to ensure that such assurances were honoured.

26. She wondered whether the detention registers referred to earlier included all the information required under article 17 of the Convention. She wished to know whether electronic registers were used in police stations, and would like the delegation to comment on the question as to how overcrowding and understaffing in prisons might interfere with the proper maintenance of registers. In her view, the definition of the term "victim" contained in the Criminal Code and the Code of Criminal Procedure was narrower than the one set out in article 24 of the Convention, which covered not only persons subjected to enforced disappearance but also their relatives or other loved ones who had suffered harm as a consequence of their disappearance. The written replies to the list of issues seemed to indicate that there was a three-year limit on victims' right to seek restitution, and she would appreciate clarification from the delegation on that matter.

27. **Mr. Huhle** said that he also was concerned that the definition of the term "victim of enforced disappearance" in Armenian law seemed to include only direct victims. The fact that one of a victim's relatives would be chosen as a legal successor would seem to indicate that the successors themselves were not considered to be victims. If that was the case, then Armenian law was not at all in line with the Convention in that regard.

28. **Mr. Corcuera Cabezut** requested clarification on the concept of a successor in Armenian law, as it appeared that a successor could be appointed even in cases where it was not known whether the disappeared person was alive or dead.

29. **Mr. Tumanov** (Armenia) said that there were no specific mechanisms in place for the assessment of the possible danger of a person being subjected to enforced disappearance in extradition cases. However, practical steps were taken to ensure that the rights of extradited persons were not violated. Requesting States were required to provide written assurances and to inform the sending State of any violations of an individual's rights. Armenian diplomats in other countries visited Armenian citizens in prison from time to time, and those visits could also help to minimize the risk of enforced disappearance. No person was ever extradited from Armenia to a State where the punishment would be the death penalty.

30. **Mr. Abgaryan** (Armenia) said that the 72-hour limit on police custody could not be extended under any circumstances and that, once that period had elapsed, the person had to be either released or charged. The relatives of a detained person were informed no later than 12 hours after his or her arrest. If the relatives lived abroad, they were informed within 24 hours. That time limit had been set to allow for any technical problems that might arise but, if there were no such problems, then the relatives would be informed immediately.

31. There were no electronic registers in police detention facilities, but such registers were used in detention facilities overseen by the Ministry of Justice. The registers contained all the information required under the Convention. It was his understanding that the only gap in the definition of victims set out in the Criminal Code related to actions prohibited under the Code, and that shortcoming would be remedied in the proposed amendments. Other than that, there was really no difference between the definition of the term "victim" in the Convention and the definition given under article 56 of the Criminal Code of Armenia. If a disappeared person were to be found alive after a successor had been appointed, that appointment would be revoked and the victim would retain the right to seek restitution. In cases where victims sought restitution after more than three years had passed since the commission of the offence, the compensation awarded would cover only the past three years. There was no statute of limitations in such cases, however, which meant that victims could seek restitution at any time.

32. **Mr. Camara** commended the delegation for the spirit of cooperation shown by its members. The constructive dialogue with the delegation had provided an opportunity to analyse the provisions of the Constitution, the Criminal Code and other relevant national laws. The issues raised by the Committee included the definition of the offence of enforced disappearance and whether it was considered to be a grave or extremely grave offence in Armenian law; the absolute prohibition of secret detention; the keeping of registers in detention facilities and penalties for failure to comply with that requirement; the right to information as it pertained to the relatives of detainees; the principle of non-refoulement; the definition of the term "victim"; the right to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person; and training on the Convention for police officers, administrative and prison staff, and judicial officials. The Committee took note with interest of the draft amendment to the Criminal Code, which contained a definition of the offence of enforced disappearance that was in line with the Convention. He encouraged the State party to continue its efforts to align all national legislation with the Convention.

33. **Ms. Janina** said that she wished to thank the delegation for its engagement with the Committee and its willingness to answer the many questions that its members had posed. While the State party had not yet completely fulfilled its obligations to codify specific offences relating to the Convention, she was heartened to see that a bill that would establish a new definition of the offence of enforced disappearance was under discussion. She encouraged the Government to hold broad discussions on the bill with civil society and the Office of the Human Rights Defender and to take the Committee's recommendations into consideration during that process.

34. She welcomed the State party's consideration of the possibility of accepting the competence of the Committee to receive and consider communications. She wished to remind the delegation that, while a proper legislative framework was important, it was even more important to ensure that the law was applied in practice. The Committee stood ready to cooperate with Armenia and all States parties to help raise awareness of the Convention and ensure its proper interpretation and implementation.

35. **Mr. Poghosyan** (Armenia) said that he would like to thank the Committee for its excellent work and said that all its concluding observations and recommendations would be studied carefully and taken into account. His delegation would provide answers in writing to any questions still pending.

36. **The Chairperson**, recognizing the importance of the issue of enforced disappearance in the State party's history, noted that Armenia had been one of the first countries to ratify the Convention and that it had submitted its initial report within the established time frame. He hoped that the Committee's comments would help to inform the development and adoption of new legislation. The delegation's transparency and willingness to respond to the Committee's questions was greatly appreciated.

The discussion covered in the summary record ended at 12.45 p.m.

United Nations CED/C/SR.124

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
11 February 2015

Original: English

Committee on Enforced Disappearances
Eighth session

Summary record of the 124th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 4 February 2015, at 3 p.m.

Chairperson: Mr. Decaux

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Consideration of reports of States parties to the Convention (*continued*)

Initial report of Serbia

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Serbia (CED/C/SRB/1 and CED/C/SRB/Q/1)

1. *At the invitation of the Chairperson, the delegation of Serbia took places at the Committee table.*

2. **Mr. Odalovic** (Serbia) said that, since 2006, Serbia had been an independent State that was committed to building a democratic society based on respect for human and minority rights. It was a party to eight international human rights treaties and had ratified a number of Council of Europe conventions on human and minority rights. Under the Serbian Constitution, international laws and treaties formed part of the national legal order and were applied directly.

3. Although Kosovo and Metohija were an integral part of the territory of Serbia on the basis of Security Council resolution 1244 (1999), the State party was unable to implement the International Convention for the Protection of All Persons from Enforced Disappearance in that province as its administration had been entrusted to the United Nations Interim Administration Mission in Kosovo (UNMIK). While the State party was willing to provide the Committee on Enforced Disappearances with any information it had in relation to the implementation of the Convention in Kosovo and Metohija, the Committee might wish to consider asking UNMIK to furnish it with any additional information it might require.

4. Enforced disappearance appeared in the Criminal Code under crimes against human rights and freedoms, which included illegal deprivation of liberty, kidnapping, crimes against humanity and war crimes against civilians. Referring to paragraph 60 of the State party's report (CED/C/SRB/1), he said that, under the Law on International Legal Assistance in Criminal Matters, the provision of such assistance was not conditional on the existence of a treaty. In accordance with article 16 of the Convention, the Ministry of Justice took precautions to ensure that persons were not extradited to States where they might be in danger of being subjected to enforced disappearance. A list of safe countries of origin and safe third countries had been established.

5. Although reports suggested that some 10,900 persons from the region were still missing, Serbia remained committed to addressing the issue of missing persons in a responsible, organized way and recognized that such efforts were crucial to its process of reconciliation and the creation of a multi-ethnic society based on democracy, the rule of law and tolerance.

6. Serbia had established a Commission for Missing Persons in 2006 to collect data on missing persons, coordinate the work of the authorities in searching for missing persons and liaise between the authorities and the associations and families of missing persons. The administrative and technical affairs of the Commission were managed by the Missing Persons Unit at the Commissariat for Refugees, which kept records on missing persons and on exhumed, identified and unidentified human remains.

7. A working group had been established to step up efforts to locate and identify missing persons in the territory of the Autonomous Province of Kosovo and Metohija. A consolidated list of missing persons had been drawn up, and 1,617 cases of missing persons had been resolved.

8. The Commission for Missing Persons provided families with any information available about the missing person's death and offered various forms of assistance. For example, the State party bore the expense of transporting the remains of missing persons and part of the burial expenses.

9. The State party was aware of the challenges posed by the passage of time and the large number of persons still missing, but it had made a point of responding to every request it had received. It had carried out exhumations in every area that was suspected of holding remains and it had returned identified remains to the families. Any additional information on the location of missing persons or graves would be followed up on and verified. Moreover, the State party would seek to provide greater assistance to the families of missing persons with respect to administrative and other matters.

10. **Mr. Corcuera Cabezut** said that he would like to know whether any of the Convention's provisions might be incompatible with the Serbian Constitution. Were there any constitutional restrictions on human rights that ran counter to the provisions of the Convention? The State party should clarify which aspects of article 27 of the Constitution, on the right to freedom and security, could be suspended during a state of emergency or war.

11. He enquired whether any provisions of the Convention had been invoked by a complainant or applied by the authorities in cases that were not related to the crimes dealt with by the War Crimes Department of the Higher Court in Belgrade. Clarification on how article 332 of the Criminal Code would be applied to a potential case of enforced disappearance would be welcome. Were any initiatives under way to include enforced disappearance as a separate crime in national legislation and, if so, how long would the legislative process take?

12. The State party should explain why no criminal charges had been filed during the period in association with cases of human trafficking that coincided with enforced disappearance. It should also indicate whether national law expressly prohibited the issuance of orders or instructions prescribing, authorizing or encouraging enforced disappearance and held persons who ordered such disappearances criminally responsible.

13. He asked what legal remedies were available to subordinates who were at risk of disciplinary measures for refusing to carry out crimes when ordered to do so by their superiors. The Committee would welcome further details on why the Military Security Agency did not have any examples of case law relating to the prohibition on invoking superior orders. Were any cases dealt with internally through disciplinary proceedings conducted by the armed forces? He asked whether the armed forces or other law enforcement authorities kept records of cases in which civil servants had refused to execute an order that would have constituted a punishable act. Did the Law on Civil Servants apply to police officers? Finally, referring to paragraph 43 of the State party's report, he asked what constituted "mitigating circumstances" in a potential case of enforced disappearance.

14. **Mr. Yakushiji** asked whether the fact that enforced disappearance did not constitute a separate criminal offence in Serbian law had any impact on the ability of courts to exercise jurisdiction in accordance with article 9 of the Convention. He wished to know whether personal and extraterritorial jurisdiction were no longer subject to the criterion of double criminality. He requested clarification as to whether the requirements set forth in article 10 of the Criminal Code had any implications for the obligations arising under article 9, paragraphs 1 and 2, of the Convention.

15. He asked which authorities were responsible for prosecuting and adjudicating offences committed by an employee of the Ministry of Defence or a member of the armed forces while in active service.

16. He wished to know what measures could be taken under Serbian law to ensure that military officers did not participate in the investigation of cases in which they were suspected of having had some kind of direct or indirect involvement. How would the State ensure the impartiality of the investigation of cases of enforced disappearance committed by Ministry of Defence or military personnel while in active service?

17. He asked which authority was responsible for deciding whether or not to suspend civil servants or police officers suspected of having committed an offence. He invited the delegation to elaborate on the statement made in the replies to the list of issues, which had been circulated informally, to the effect that an employee of the Ministry of the Interior could be suspended if his or her presence at work would harm the interests of the service. He would also like to know whether members of the armed forces or military police could be suspended from duty while under criminal investigation.

18. He requested information about the steps taken to bring to justice the perpetrators of any past acts of enforced disappearance committed in Serbia or by Serbian officials or by persons or groups of persons acting with such officials' authorization, support or acquiescence. He asked the delegation to comment on reports that progress in that regard had been slow because the Office of the War Crimes Prosecutor was under-resourced. While acknowledging that laws could not be applied retroactively, he asked why the Serbian courts did not consider acts of enforced disappearance as a crime against humanity in accordance with article 5 of the Convention, taking into account the continuous nature of the offence as established in article 8 thereof. It was the Committee's understanding that the majority of cases of enforced disappearance committed in the context of the armed conflict in the Federal Republic of Yugoslavia had been prosecuted as war crimes. He would therefore like to know what treatment would be given to cases of enforced disappearance that had occurred after the cessation of the conflict but which were a consequence of it, such as the case of the Bytyqi brothers. Would commanders and civilian superiors be prosecuted in such cases?

19. He asked how long it would take to complete improvements to the witness protection system and to establish a new witness protection unit. What measures would the State party adopt to ensure the independence of the unit?

20. He invited the delegation to comment on allegations that witnesses in war crimes trials had been threatened by officials charged with their protection. Were any of those cases related to investigations of cases of enforced disappearance? What measures were taken to ensure that officials suspected of threatening witnesses were suspended from duty as a preventive measure and, where appropriate, prosecuted and punished?

21. He wished to know whether the Public Prosecutor's Office for War Crimes and the War Crimes Investigation Service had immediate access to any place of detention or any other place where there were reasonable grounds to believe that a disappeared person might be present and, if so, whether there were any restrictions on that access. Did the Public Prosecutor's Office for War Crimes have unrestricted access to the archives of the military and police forces?

22. He enquired whether any requests for international judicial assistance had been refused on the basis of article 7 of the Law on International Legal Assistance in Criminal Matters.

23. Lastly, he asked the delegation whether it could provide any examples of cases in which the Convention had been used as a basis for extradition. Had extradition requests been granted in cases of enforced disappearance? Had the State party ever refused a request for extradition relating to a person sought in a case of enforced disappearance, unlawful deprivation of liberty or abduction and, if so, on what grounds?

24. **Mr. Hazan** asked whether the State party had received any requests for cooperation from any other States in relation to cases of enforced disappearance and, if so, what the outcome had been. What mechanisms existed to deal with requests from other States relating to the search for persons who had disappeared in the territory of the State party?

25. **Ms. Janina** said that she wished to recall the importance attached by the Committee to the involvement of families of victims' organizations, human rights defenders working on the issue of enforced disappearance and non-governmental organizations in the preparation of reports. Such involvement not only enhanced the quality of the reports but also promoted the enjoyment of the rights set forth in the Convention. In that connection, she wished to know what the Government had done to act upon information submitted to it by civil society organizations during consultations leading up to the preparation of the initial report.

26. According to information received by the Committee, the Government was unwilling to open State archives to the general public — or even to the Office of the War Crimes Prosecutor — to allow research into the location of graves. She would therefore like to know who had the right to access those archives and how that right was exercised in practice.

27. Lastly, she wished to know whether the Government intended to comply with its obligation under article 4 of the Convention to ensure that enforced disappearance constituted an offence under its criminal law.

The meeting was suspended at 4.05 p.m. and resumed at 4.50 p.m.

28. **Mr. Odalovic** (Serbia) said that to date no provisions of the Convention had been identified as being incompatible with the Constitution.

29. **Ms. Mirovic** (Serbia) said that, although the crime of enforced disappearance did not constitute a separate offence in national legislation, it was an act that was prosecuted ex officio under criminal law.

30. **Ms. Vazic** (Serbia) said that, during a state of emergency or war, the exercise of certain human rights could be restricted under article 27 of the Constitution by order of the competent authority. However, all such orders were subject to review by the Constitutional Court.

31. The Government was currently drafting legislative amendments designed to ensure that the crime of enforced disappearance was specifically covered under the Criminal Code. It was likely that those amendments would be passed into law in early 2016.

32. The provisions of article 332 of the Criminal Code concerning the failure to report the preparation or commission of a criminal offence could be applied in cases of enforced disappearance in conjunction with other provisions of the Code relating to unlawful deprivation of liberty or abduction.

33. **Mr. Rabrenovic** (Serbia) said that a military officer or other State official who ordered an enforced disappearance would be liable to punishment under the Criminal Code.

34. **Mr. Pantic** (Serbia) said that, under the Police Act, police officers were not obliged to obey an order if they believed that following it would involve the commission of a crime or contravene the law. In such circumstances, the officer or officers concerned could ask for the order to be provided in writing. No complaints had been filed with the competent authorities in that regard.

35. **Ms. Vazic** (Serbia) said that any person who ordered the commission of a crime of enforced disappearance would be held criminally responsible as a co-offender. According to well-established Serbian case law, no one might invoke an order from a superior authority to justify any offence, including one of enforced disappearance.

36. **Ms. Mirovic** (Serbia) said that the fact that enforced disappearance was not defined as a separate offence in national law was not an obstacle to the exercise of jurisdiction by the Serbian courts over acts of enforced disappearance committed in the territory of Serbia

or committed abroad by or against Serbian nationals. However, the prosecution of an offence in Serbia was subject to the requirement of double criminality inasmuch as equivalent — but not necessarily identical — provisions should exist in the two jurisdictions concerned.

37. **Mr. Rabrenovic** (Serbia) said that since 2004 civilian authorities had jurisdiction over criminal offences committed by employees of the Ministry of Defence or members of the armed forces while on duty. Prosecutions related to war crimes were handled by the War Crimes Prosecutor.

38. **Mr. Dilparic** (Serbia) said that the new Criminal Code that had entered into force in Serbia following the submission of the State party's initial report to the Committee in September 2013 stipulated that investigations were the exclusive competence of the public prosecutor. The involvement of the military police was limited to informing the relevant prosecutor's office that a criminal offence had been committed. Prosecutors had discretion to decide whether certain officials, including police officers, could take part in the investigation. Given their ages and the amount of time that had elapsed since the commission of the war crimes currently being investigated in Serbia, the members of the war crimes investigation and prosecution teams could not possibly have been involved in those crimes.

39. **Mr. Odalovic** (Serbia) said that the rules relating to the exclusion of public servants from investigations were well defined in the normative framework. However, because of the lack of cases of enforced disappearance, no practice had been developed with specific reference to such cases.

40. **Ms. Vazic** (Serbia) said that the rules relating to the application of mitigating circumstances in connection with an act of enforced disappearance were the same as those for other criminal offences, as stipulated in article 56 of the Criminal Code. An individual's contribution to shedding light on the whereabouts of a person in an enforced disappearance case would certainly be regarded as a mitigating circumstance, and prosecutors had the prerogative to engage in plea bargaining with defendants in order to obtain such information.

41. **Mr. Rabrenovic** (Serbia) said that, in the context of the European Union accession negotiations that were currently under way with Serbia, the European Commission had issued a number of recommendations in its *Serbia Progress Report* of October 2014 that related to the domestic processing of war crime cases. In response to the Commission's recommendations, the Government had formulated an action plan, whose implementation had been entrusted to the Ministry of Justice. Over the course of the past year the Ministry had contacted all the relevant State authorities about the action plan and had submitted the plan to civil society organizations in order to solicit their views. The finalized plan had been submitted to the European Commission. The Ministry of Justice, in conjunction with other relevant State bodies, would embark on a capacity-building effort for the Office of the War Crimes Prosecutor during the period 2015–2018, as indicated in the action plan.

42. Since the law did not define what constituted a crime against humanity, the War Crimes Department of the Higher Court in Belgrade had not yet heard a case in which a criminal offence had been qualified as such. However, that did not mean that, in future, such a definition might not be incorporated into the law. Since the submission of the initial report, progress had been made in the adjudication of cases relating to the applicability of rules of international humanitarian law in cases where the offence had been committed after the cessation of the armed conflict in Kosovo. The Supreme Court of Cassation had handed down decisions in both the Gnielena and Bytyqi cases in which it had considered that the end of the conflict in Kosovo could be interpreted as being 20 June 1999.

43. Serbia had developed a full-fledged witness protection system that included the establishment of a witness protection unit in the Ministry of the Interior. The unit had been allocated the necessary financial and human resources to carry out its activities, including training for its staff of psychologists, sociologists and other experts. The action plan submitted to the European Commission contained proposed improvements to the system, such as independent oversight, in response to allegations that witnesses in war crimes trials had been threatened by members of the unit. The Public Prosecutor's Office and the Office of the War Crimes Prosecutor had unrestricted access to places of detention in the country and to military and other archives.

44. **Ms. Pavlovic** (Serbia) said that Serbia had signed the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols thereto and enacted the Law on International Legal Assistance in Criminal Matters, which established the conditions for providing legal assistance to States with which it had no treaty in force or where the treaty did not regulate a particular matter. Among the preconditions for the execution of requests for mutual assistance stipulated in the Law were that the offence in question must constitute an offence under Serbian law; that such requests must not relate to a political offence or to an offence comprised solely of the violation of military duties; and that the execution of the request must not impinge on the sovereignty of the Republic of Serbia. It also stipulated that mutual assistance was to be granted in cases of violations of international humanitarian law that were not subject to statutory limitations.

45. Decisions on whether to grant requests for extradition were made by the Minister of Justice. The Law on International Legal Assistance in Criminal Matters provided that extradition could be granted for the purposes of prosecution of offences that were punishable under Serbian law by sentences of at least 1 year's imprisonment. If extradition were granted, the defendant could not be extradited to a third State for a criminal offence that had been committed before the extradition and which was not the subject of the extradition. The Ministry of Justice decided on a case-by-case basis whether there were grounds for believing that the person sought for extradition would be in danger of being subjected to enforced disappearance in the requesting State.

46. **Mr. Odalovic** (Serbia) said that the Government of Serbia had transferred numerous documents from police and military archives to various working groups and government commissions on missing persons in the region. In the case of Kosovo, it had shared more than 2,500 files with the Pristina delegation of the working group on missing persons in the territory of the Autonomous Province of Kosovo and Metohija, and in the case of Croatia, it had shared some 1,100 documents on the fate of the wounded and ill in the Vukovar hospital incident. The Government remained committed to granting all requests for consultation of its archives.

47. The Office of the War Crimes Prosecutor was immediately informed whenever the Government received a request for exhumation in the territory of Serbia, and orders were issued to review the relevant information and investigate the location. When human remains were found at the location, then the matter was turned over to the judicial authorities. In the Raška case, after the first human remains had been located, the judicial authorities had processed the case in a fully transparent manner in the presence of international representatives from the Pristina delegation, the European Union Rule of Law Mission in Kosovo and the United Nations Interim Administration Mission in Kosovo (UNMIK). The various national commissions on missing persons in the region had reciprocal arrangements for monitoring exhumations in which one or more countries might have an interest.

48. A regrettable incident had occurred in Serbia in which family members of missing persons had been told misinformation claiming that their loved ones were still alive in secret prisons. The heads of the Belgrade and Pristina delegations had both signed

statements on behalf of the missing persons institutions they represented to certify that there were no such secret prisons.

49. **Mr. Corcuera Cabezut** said that, although enforced disappearance had not been classified as a separate offence in the Criminal Code, victims and other stakeholders could still invoke the Convention directly before the courts. Some of the areas in which the Convention could be applied directly were the training of government officials, victims' rights, extradition and non-refoulement. The only aspect of the Convention that was not directly applicable was that pertaining to the penalties for the offences covered by the Convention, which each State party had to lay down in its national legislation.

50. **Mr. Yakushigi** requested an account of how an act of enforced disappearance that had been committed outside the territory of Serbia would be prosecuted by Serbian courts if that act had not been defined as a separate offence in the criminal codes of both countries. When an act of enforced disappearance was punishable as the sum of its constitutive elements in each country, there were likely to be discrepancies between those elements.

51. He wished to have a full explanation of the changes that had been made to the criminal investigation procedure, particularly in terms of the involvement of the Prosecutor General and the prosecution of members of the armed forces who had been implicated in war crimes.

52. **Mr. Hazan** asked whether a case of enforced disappearance for which international assistance in criminal matters had been requested would be regarded as a political offence and if assistance could be provided in such cases under Serbian law. Noting that many characteristics of the offence of human trafficking overlapped with those of enforced disappearance, he asked whether any criminal complaints or proceedings relating to human trafficking had been registered and, if so, which offence had been alleged, which body had prosecuted them and what statistics could the State party provide on that situation.

The meeting rose at 6 p.m.

United Nations CED/C/SR.125

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
10 February 2015

Original: English

Committee on Enforced Disappearances
Eighth session

Summary record of the 125th meeting
Held at the Palais Wilson, Geneva, on Thursday, 5 February 2015, at 10 a.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Serbia (continued) (CED/C/SRB/1 and CED/C/SRB/Q/1)

1. *At the invitation of the Chairperson, the delegation of Serbia took places at the Committee table.*

2. **Ms. Pavlovic** (Serbia), in reply to questions asked at the preceding meeting (CED/C/SR.124), said that the Convention had been incorporated into national law, and there were thus no obstacles to its implementation. Article 10 of the Criminal Code provided that persons could not be prosecuted in Serbia if they had served a sentence for the same offence abroad, if the statute of limitations on the enforcement of the sentence had run out, if they had been pardoned or if they lacked legal capacity. Although enforced disappearance was not an offence in its own right under national law, a person could be prosecuted for the various offences involved in enforced disappearance. Moreover, if enforced disappearance was not an offence in the country where it had been committed, the Serbian courts could still try the suspect on the authorization of the Public Prosecutor or by directly applying relevant international instruments. There did not have to be an exact correspondence between the law of the country where the offence had been committed and Serbian law.

3. **Mr. Yakushiji**, referring back to the State party's replies to the list of issues, which had been circulated informally, said that he would like to know whether the risk that a person might be subjected to enforced disappearance was assessed in the course of expulsion, return and asylum procedures and, if so, how many extradition requests had been denied and how many asylum claims had been approved on those grounds. Under what conditions would diplomatic assurances be accepted when there was reason to believe that the person might be subjected to enforced disappearance? Were there plans to adopt a specific legal provision on non-refoulement that would apply in such cases? What countries were included in the list of "safe countries", what criteria were used to draw up that list and how often was the list reviewed? He wished to know whether, prior to proceeding with an expulsion, return, surrender or extradition to a State that was considered safe, a thorough assessment of the individual's degree of direct and indirect personal risk was conducted. He wished to know whether persons subject to expulsion, return or extradition had effective access to free legal counsel and interpreting services. He also wished to know whether expulsion and return orders could be appealed and, if so, before what authority and on what grounds. In addition, if such appeals were allowed, did they have an automatic suspensive effect?

4. Turning to the issue of arrest and detention registers, he asked whether the State party intended to take steps to ensure that prison registers met the requirements set forth in article 17, paragraph 3, of the Convention; whether the information they contained could be accessed by the Ombudsman (whose formal title was the Protector of Citizens), defence lawyers and judges; and whether there had been any complaints regarding a failure to maintain such registers properly. It would be useful to know when the bill on a national DNA registry would be enacted. He also wished to know how the right of notification of custody was safeguarded in practice, especially since such notifications were performed by the police rather than directly by the person taken into custody. He wondered whether any complaints had been filed for failure to notify the designated person promptly and, if so, what proceedings had ensued and what penalties had been imposed.

5. He requested further information about the work of the Ombudsman. Did that office have the authority to monitor the implementation of the Convention and had it received and

considered any complaints regarding the rights and obligations covered in the Convention? Did public officials receive specific training concerning the Convention?

6. **Mr. Corcuera Cabezut**, pointing out that the State party had not provided a full written reply to the questions contained in paragraph 22 of the list of issues, asked whether persons, including relatives, who had suffered harm as a direct result of an enforced disappearance were entitled to reparation and rehabilitation and, if so, whether such redress was provided by the Commission for Missing Persons or another body. He also asked whether the civil courts had ever granted reparation to victims of enforced disappearance and what the threshold conditions were for establishing pecuniary damages. In reference to paragraph 145 of the State party's report, he wished to know what steps had been taken to overcome the obstacles posed by the Law on the Rights of Civilian War Victims to the enjoyment by victims' families of their rights.

7. With reference to paragraph 95 of the report, he would like the delegation to comment on the progress made in investigating the circumstances surrounding the enforced disappearance of thousands of people during the conflict in the former Federal Republic of Yugoslavia, discovering the fate and whereabouts of the victims, and granting reparation. Despite the efforts of the working group on persons unaccounted for in connection with events in Kosovo, nearly 1,700 people were still listed as missing. What steps were the authorities taking to speed up the search? Had any investigations and legal proceedings been launched on the basis of the working group's findings? Did the working group's mandate include the provision of reparation to the victims' families?

8. He would like to know whether the State party intended to amend the Criminal Code to cover the offences relating to the wrongful removal of children specified in article 25 of the Convention. He would appreciate information about child victims of enforced disappearance and would like to know if those cases had been registered and what steps, including the establishment of mutual assistance mechanisms between countries, had been taken to locate and identify child victims of enforced disappearance and to provide support to those children and their families. The Committee would be interested in hearing about examples of cases where the provisions of the Family Act regarding the annulment of adoptions had been applied in cases where children had been wrongfully removed from their parents or whose parents were unknown.

9. **Ms. Janina**, noting that Serbian law did not appear to cover all victims, notably the victims of Serbian military operations outside the country, asked how the State party upheld victims' right to truth and reparation. She wished to know why the State party did not have a specific law on missing persons.

10. **Mr. Huhle**, recalling that the definition of the term "victim" under the Convention was not restricted to relatives, let alone close relatives, and noting that the State party intended to amend the Criminal Code to replace the term "damaged party" or "injured party" with the word "victim", asked whether the amendment would be sufficient to bring the definition of "victim" into line with the Convention.

The meeting was suspended at 10.40 a.m. and resumed at 11.35 a.m.

11. **Ms. Pavlovic** (Serbia) said that, pursuant to the Constitution of Serbia and other national laws, persons could not be expelled or returned against their will to countries where their life or freedom was in danger due to their race, language, religious affiliation, ethnicity or other grounds. Decisions on expulsion were taken by a court of law, and those decisions could be appealed to a higher court. The decisions of the higher court could in turn be appealed to the Ministry of Justice, whose decision was final. In cases where a court found that the required conditions for expulsion had been met, that decision must be confirmed by the Ministry of Justice; if, on the other hand, the court found that the conditions had not been met, the Ministry of Justice could not alter that decision. Each case

was examined individually, and any circumstances that might put a person at risk of enforced disappearance were taken into consideration. All persons who could not afford to hire legal counsel were entitled to free legal aid. Persons subject to expulsion proceedings were also entitled to interpretation services and to contact with their family members or their country's diplomatic representatives in Serbia.

12. Serbia was a member of international police organizations such as Interpol and EUROPOL and actively cooperated with various diplomatic missions. Information about whether the rights of persons expelled to another country were being violated could be obtained from those sources.

13. **Mr. Pantic** (Serbia) said that a list of what were considered to be safe countries had been drawn up. That list included 54 safe countries of origin and 42 safe third countries. In order to be included on that list, States must adhere to principles such as respect for human rights and the prohibition of torture. The list had last been reviewed in 2009, and there were currently no plans to update it.

14. **Ms. Pavlovic** (Serbia) said that the conditions that must be met in order for a defendant or convict to be extradited or surrendered to a foreign State were defined in the Law on International Legal Assistance in Criminal Matters.

15. **Mr. Odalovic** (Serbia) said that his delegation would provide the Committee with a written copy of that law. The Office of the Ombudsman was a relatively new institution that was tasked with protecting the rights of Serbian citizens, including the right not to be subjected to enforced disappearance. The Ombudsman had the authority to visit all places of detention and to communicate freely with persons deprived of their liberty.

16. **Ms. Mirovic** (Serbia) said that places of detention kept both electronic and paper registers of detainees and prisoners; a personal file on each person was maintained that included all the decisions handed down in each person's case. The main register included information such as the person's name, date of birth, mother's and father's names, citizenship and identification number. The requirement to keep such registers was established by law. The work of the Directorate for the Enforcement of Criminal Sanctions of the Ministry of Justice was monitored by NGOs, and in most cases its performance had been deemed satisfactory.

17. **Ms. Vazic** (Serbia) said that all State authorities were required to cooperate with the Office of the Ombudsman and to provide it with access to all relevant information about persons deprived of their liberty. The Office of the Ombudsman had the power to initiate disciplinary proceedings against any official who refused to cooperate with it and to request the official's dismissal. Under Serbian law, the Ombudsman must have unhindered access to all correctional institutions and had the right to hold private meetings with persons deprived of their liberty. All State authorities, including prison authorities, were required to comply with requests from the court for evidence or information, even when the request concerned persons whose deprivation of liberty had not been ordered by the court, such as persons in police custody.

18. **Mr. Dilparic** (Serbia) said that all persons in custody were held in places of detention run by the Directorate for the Enforcement of Criminal Sanctions. The police must immediately bring arrested persons before a prosecutor, who had 48 hours to decide whether they should be brought before a judge or released. Once the prosecutor had issued an order to open criminal proceedings, a court or panel of judges decided whether the individual should remain in custody. Detainees or their legal counsel could appeal such decisions, although in practice that rarely occurred. The parents of detainees or other members of their family could hire legal counsel to represent them. Decisions on appeals that challenged the lawfulness of a detention or custody order were issued by a panel of three judges that did not include the judge who had issued the decision at first instance, and

such decisions were reviewed every 30 days. Places of detention were responsible only for overseeing the application of criminal sanctions, while persons deprived of their liberty remained under the jurisdiction of the court and were entitled to communicate in writing with the court, receive family visits three times per month and receive meals from home. He was not aware of any complaints about the records kept by the Directorate. Upon arrival at a police station, arrested persons were immediately asked whom they wished to be notified of their arrest.

19. **Mr. Yakushiji** asked the delegation to provide information in writing on the procedures that Mr. Dilparic had just described.

20. **Mr. Dilparic** (Serbia) said that foreigners who were taken into custody could request that the diplomatic representative of their country in Serbia should be informed of their deprivation of liberty.

21. **Mr. Pantic** (Serbia) said that the bill on the DNA registry was in its final drafting phase and would most likely be adopted ahead of schedule, perhaps even before the end of 2015. The adoption of the bill was a priority, and the most highly qualified experts were involved in its preparation. In November 2014, a working group had been established to prepare a handbook to provide guidelines for police conduct in cases of abduction.

22. **Ms. Mirovic** (Serbia) said that training concerning international human rights treaties was provided to judges and prosecutors at the Judicial Academy, while police officers received separate training at the Police Academy. As the Convention was relatively new, there was scope for further training regarding its specific provisions, and she was confident that the relevant training centres would include such modules in their curricula.

23. **Mr. Odalovic** (Serbia) said that the adoption of a law on missing persons was of the utmost priority and that for the past several years Serbia had been making a determined effort to provide full legal coverage for all cases of persons who had gone missing during the conflict in the former Yugoslavia. Serbia was working with other countries of the region to seek a joint solution to that difficult problem. The task was complicated by conflicts of jurisdiction among the various States that had made up the former Yugoslavia. About 30 million euros were allocated annually to provide pensions and other financial support to 448 family members of missing persons. The Commission for Missing Persons also worked to uphold their rights, and there was a special programme for families of missing persons that were in particularly vulnerable positions. Psychological support had been provided to some 780 families of missing persons at workshops held in cooperation with the International Committee of the Red Cross. Thus, a great deal was being done to protect the families' rights even in the absence of a comprehensive law on the subject.

24. The Government ensured that searches for missing and disappeared persons continued until the whereabouts of those persons was discovered. The registered number of missing persons had fallen, and the number of missing children was under 200. Cooperation and information exchange among all authorities of the countries that had once made up the former Yugoslavia and international organizations were essential in order for the search for missing persons to be effective. Joint efforts were crucial in order to locate mass graves and identify the persons responsible for enforced disappearances that occurred during the former conflict.

25. **Ms. Vazic** (Serbia) said that, while no specific mechanism had been established for providing reparation to the families of missing persons and victims of enforced disappearance, victims were entitled to use various judicial procedures to claim compensation. Furthermore, if victims' families could prove that the State had failed to carry out an investigation into their case, they could also apply for reparation. The burden of proof in such circumstances, however, lay with the families. Those procedures would

remain in effect until new legislation was introduced that would make administrative procedures for reparation applications available to victims.

26. **Ms. Pavlovic** (Serbia) said that proposed amendments to the Criminal Code would define and classify enforced disappearance as a criminal offence in its own right. The classifications of other related offences would also be amended. Adoption was governed by the Family Law. While only a court could declare an adoption null and void, child protection authorities were empowered to request the initiation of the cancellation procedure. However, no such requests had been submitted to date.

27. **Mr. Rabrenovic** (Serbia) said that the State party had made all its archives available to the International Criminal Tribunal for the Former Yugoslavia in order to facilitate the Chief Prosecutor's investigations and assist in shedding light on the identities of persons who had committed and covered up acts of genocide. The State party's cooperation with the Tribunal had been officially recognized by several bodies, including the Tribunal itself. The extensive work of the Office of the War Crimes Prosecutor, which had access to all military and police records in Serbia, had also been acknowledged. The Tribunal had the most comprehensive records because some documents had been submitted directly to it rather than to the State archives.

28. **Mr. Dilparic** (Serbia) said that the opening of a mass grave automatically triggered an investigation, and a judgement of first instance was pronounced at that time. Investigations were currently being conducted into cases where attempts had apparently been made to conceal mass killings by relocating people's remains. Such investigations were particularly challenging because there was no written documentation on the location of those types of graves.

29. **Ms. Mirovic** (Serbia) said that the definition of the term "victim" in Serbian law would be amended in the course of the State party's European Union accession negotiations and aligned with the Convention, which set out a broader definition. The alignment of national legislation was to be completed before the end of 2015.

30. **Mr. Corcuera Cabezut** asked whether the State party might consider amending national legislation in order to make comprehensive victim protection services, including legal and social entitlements such as inheritance rights, available without requiring the issuance of a death certificate for a missing person. The State party might draw on examples of updated legislation in Latin America. Would the Government also consider providing for other forms of non-financial reparation? Did the 2004 Supreme Court decision requiring claims against the State to be brought within five years of the commission of the wrongful act apply to gross human rights violations and cases of enforced disappearance? Bearing in mind the continuous nature of the crime of enforced disappearance, the question arose as to whether or not that decision might prevent victims from obtaining reparation.

31. **Mr. Yakushiji** said that he would like to express his sincere thanks to the delegation for its detailed presentation, which had provided the Committee with a deeper understanding of how the Convention was being applied in the State party. The Committee had also been made aware of the challenges faced by the State party with regard to the search for persons who had gone missing or disappeared during the conflict in the former Yugoslavia. He looked forward to continued interaction between the State party and the Committee with a view to improving the application of the Convention in the State party.

32. **Mr. Corcuera Cabezut** thanked the delegation for its engagement and for providing such useful information. The Committee was grateful for the delegation's explanations of the complex and sensitive issues of international law posed by the repercussions of the conflict in the former Yugoslavia. It would discuss those matters further and seek advice from the United Nations Legal Counsel when preparing its concluding observations.

33. **Mr. Odalovic** (Serbia) said that there was no disagreement among the various countries in the territory of the former Yugoslavia regarding the approach to be taken to cases of persons who had gone missing or had disappeared during the conflict. Each country was developing its own legislation in that respect, but national laws were not yet being invoked in foreign courts. Meetings were being held, notably between Serbia and Kosovo, in order to align different bodies of law with a view to increasing the efficiency of investigations and humanitarian responses. The extremely challenging nature of those problems in no way weakened the State party's resolve to seek solutions, however. He thanked the rapporteurs for their efforts and the Committee for the constructive dialogue, which had enhanced the understanding of both parties and would help the State party to achieve its goals in terms of the application of the Convention.

34. **The Chairperson** thanked the Serbian delegation for its open-minded cooperation and thorough replies.

The meeting rose at 1 p.m.